

EDUCATION — C.S.H.B. 2313

JURISPRUDENCE — S.B. 1720

HEALTH AND HUMAN SERVICES — C.S.H.B. 2027, C.S.H.B. 869

**SEVENTY-FIRST DAY**

(Monday, May 15, 1995)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

Pastor E. Dale Hill, Grand Parkway Baptist Church, Houston, offered the invocation as follows:

Heavenly Father, as one who knows little of the law, but much of Your grace, I ask only two things this morning. First, I ask You to remind us, all of Your people, that we are called to be, above all else, divinely elected ambassadors of Your kingdom on Earth. Lead us, therefore, to be diligent in all things which speak clearly and confidently of Your claim on our lives. Given the weakness of the flesh and the strength of our eternal adversary, the reality that we may be less than we should is always a present danger. Next, I ask especially for these in this honored hall that they be given wisdom and courage beyond themselves to guide our great State of Texas to be an example for this nation under God. May our light shine brightly against the growing darkness of these days and show the way of life abundant. May they bear in mind that while changing times require us to be flexible when necessary, Your changeless truth requires us to be disciplined to stand up for what is right—now and forever. For God is God and nothing else. People are people and nothing more. And truth is truth and nothing else. In Jesus' name. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of Friday, May 12, 1995, was dispensed with and the Journal was approved.

**CO-SPONSOR OF HOUSE BILL 1479**

On motion of Senator Barrientos and by unanimous consent, Senator Moncrief will be shown as Co-sponsor of **H.B. 1479**.

**CO-SPONSOR OF HOUSE BILL 2553**

On motion of Senator Harris and by unanimous consent, Senator Barrientos will be shown as Co-sponsor of **H.B. 2553**.

**CO-SPONSOR OF HOUSE BILL 3003**

On motion of Senator Sims and by unanimous consent, Senator Lucio will be shown as Co-sponsor of **H.B. 3003**.

**CO-SPONSOR OF HOUSE BILL 3226**

On motion of Senator Patterson and by unanimous consent, Senator Armbrister will be shown as Co-sponsor of **H.B. 3226**.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 15, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 29**, Relating to tuition-free higher education of senior citizens.

**H.B. 52**, Relating to the authority of state and local governments to make purchases and contracts and to engage in certain projects.

**H.B. 76**, Relating to the release of certain medical records of missing persons.

**H.B. 93**, Relating to the penalty for the offense of intoxication manslaughter.

**H.B. 138**, Relating to the detention of a child alleged to have committed an offense.

**H.B. 175**, Relating to the protection of a public employee who reports a violation of law.

**H.B. 246**, Relating to removing a county official from office.

**H.B. 299**, Relating to violations of rules or statutes applicable to personal care facilities.

**H.B. 302**, Relating to the offense of criminal mischief.

**H.B. 422**, Relating to the adoption of the Uniform Transfer On Death Security Registration Act.

**H.B. 467**, Relating to taxation of fuel used in the repair of rolling stock.

**H.B. 482**, Relating to county and district clerks reporting judicial appointments.

**H.B. 485**, Relating to the characterization of expenses incurred in connection with a meeting of an organization or club affiliated with a political party.

**H.B. 496**, Relating to the issuance of special license plates for certain vehicles owned by certain foreign organizations.

**H.B. 632**, Relating to safety standards for public playgrounds and limits on the civil liability of a person who provides and maintains a safe playground.

**H.B. 647**, Relating to the modification of an order providing for a managing conservator's or possessory conservator's possession of and access to a child on a conviction for child abuse; providing a penalty.

**H.B. 664**, Relating to a referendum on whether certain municipalities should create a sports facility district.

**H.B. 692**, Relating to the ability to recover damages for injuries to a convicted criminal arising from the commission of the offense.

**H.B. 852**, Relating to investigations of judges by the State Commission on Judicial Conduct.

**H.B. 883**, Relating to the regulation of certain nursing practices.

**H.B. 888**, Relating to the correction of an ad valorem tax appraisal roll.

**H.B. 932**, Relating to the authority of a member of the state military to possess certain weapons while in the discharge of official duties.

**H.B. 938**, Relating to tuition fees at public upper-level institutions of higher education for students residing in bordering states.

**H.B. 982**, Relating to the children's trust fund and the Children's Trust Fund of Texas Council operating fund.

**H.B. 1053**, Relating to funding for victims of family violence.

**H.B. 1079**, Relating to prosecution of the offense of tampering with or fabricating physical evidence.

**H.B. 1108**, Relating to requiring a criminal background check for a prospective adoptive parent.

**H.B. 1109**, Relating to a mandatory study into the circumstances and condition of the home of a person seeking to adopt a child.

**H.B. 1125**, Relating to the forced sale of a co-owner's interest in certain real property.

**H.B. 1195**, Relating to the appointment of persons convicted of certain crimes as guardians.

**H.B. 1201**, Relating to allowing the prepayment of the franchise tax in quarterly installments.

**H.B. 1209**, Relating to designating peace officers to serve as notaries public.

**H.B. 1247**, Relating to the appointment of counsel to represent indigent defendants or inmates.

**H.B. 1277**, Relating to a review of constitutionally dedicated funds by the Funds Review Advisory Committee.

**H.B. 1330**, Relating to filing statements and reports electronically with the Texas Ethics Commission.

**H.B. 1357**, Relating to the assessment of damages, costs, and attorney's fees in an eminent domain proceeding.

**H.B. 1361**, Relating to the authority of a rural fire prevention district to borrow money.

**H.B. 1433**, Relating to the eligibility for release on mandatory supervision of certain inmates of the institutional division of the Texas Department of Criminal Justice.

**H.B. 1440**, Relating to the dismissal of an appeal from a justice or municipal court in a criminal case.

**H.B. 1496**, Relating to indemnity provisions in certain mineral agreements.

**H.B. 1538**, Relating to the availability to law enforcement agencies of certain information relating to inmates in the institutional division of the Texas Department of Criminal Justice.

**H.B. 1541**, Relating to the prohibition of the sale or transfer of certain plumbing fixtures.

**H.B. 1598**, Relating to the organization of the district courts in Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties and the offices of the district attorneys of the 34th and 83rd judicial districts.

**H.B. 1649**, Relating to the development and implementation of an electronic data processing system to expedite payments to certain child-care providers.

**H.B. 1650**, Relating to the qualifications of sheriffs.

**H.B. 1652**, Relating to personnel records maintained by certain sheriff's departments.

**H.B. 1662**, Relating to the powers and duties of the Department of Protective and Regulatory Services; providing penalties.

**H.B. 1687**, Relating to the notification of school personnel of the arrest or detention of a student.

**H.B. 1726**, Relating to certain criminal background information obtained by the Texas Commission on Alcohol and Drug Abuse.

**H.B. 1758**, Relating to the use of telephones by defendants confined in the institutional division of the Texas Department of Criminal Justice.

**H.B. 1777**, Relating to the regulation of small telecommunications utilities and telephone cooperative corporations.

**H.B. 1783**, Relating to the authority of certain counties to charge a fee for installing or replacing water or sewer lines.

**H.B. 1826**, Relating to the approval of disposal system plans by the Texas Natural Resource Conservation Commission.

**H.B. 1830**, Relating to the use of certain lighting equipment on motor vehicles.

**H.B. 1832**, Relating to the creation of emergency services districts without taxing authority and the conversion of such districts to emergency services districts with taxing authority.

**H.B. 1884**, Relating to the additional tax imposed on certain land appraised for ad valorem tax purposes as open-space land the use of which is changed to cemetery purposes.

**H.B. 1879**, Relating to the change of name of a party to a suit for dissolution of a marriage.

**H.B. 1892**, Relating to an exemption from the oil and gas production taxes for hydrocarbons produced from wells that use new recovery techniques; providing a civil penalty.

**H.B. 1933**, Relating to the provision of information to the holders of certain insurance policies.

**H.B. 1935**, Relating to single certification of an area served by a municipality and certain retail public utilities.

**H.B. 1953**, Relating to the Bill Blackwood Law Enforcement Management Institute of Texas and its governance and programs for police chiefs.

**H.B. 1956**, Relating to eliminating certain mandated reports prepared by the Texas Parks and Wildlife Commission or the Texas Parks and Wildlife Department.

**H.B. 2000**, Relating to the application of nepotism laws to the employment of a substitute teacher in school districts and the employment of certain personal attendants.

**H.B. 2012**, Relating to the disclosure of certain information collected by the Parks and Wildlife Department.

**H.B. 2029**, Relating to guardianships and incapacitated persons.

**H.B. 2032**, Relating to the administration of medical and dental units of public institutions of higher education.

**H.B. 2113**, Relating to court-ordered mental health services and prohibiting certain persons receiving those services from participating in a drug development research protocol.

**H.B. 2037**, Relating to the creation of the offense of indecency with a disabled individual.

**H.B. 2080**, Relating to creation of an offense involving presence of a minor on premises covered by certain alcoholic beverage permits or licenses.

**H.B. 2085**, Relating to the liability of certain private and governmental owners of agricultural land used for recreation.

**H.B. 2122**, Relating to deductibles for workers' compensation insurance.

**H.B. 2133**, Relating to the authority of certain Parks and Wildlife Department employees to enter on private property and to the use of information obtained.

**H.B. 2138**, Relating to authorizing the sale to the public of articles and products manufactured by a county jail industries program.

**H.B. 2139**, Relating to the authority of the board of the Travis County Water Control and Improvement District No. 14 to exclude certain territory.

**H.B. 2143**, Relating to the creation of an emergency services district and simultaneous dissolution of a rural fire prevention district.

**H.B. 2180**, Relating to financial assistance for aviation facilities development.

**H.B. 2177**, Relating to the validation of all acts, governmental proceedings, officials, bonds, and obligations of navigation districts.

**H.B. 2198**, Relating to establishing a pilot program to use suitable underutilized state property for community gardens and farmers markets for the benefit of low-income and needy families.

**H.B. 2200**, Relating to the exemption of certain training programs for plumbers from the regulations applicable to proprietary schools.

**H.B. 2227**, Relating to the method of sale of charitable raffle tickets.

**H.B. 2253**, Relating to the operation of tanning facilities; providing a criminal penalty.

**H.B. 2257**, Relating to certain inquiries made by the Texas Department of Insurance and information from those inquiries.

**H.B. 2263**, Relating to having standing as a party to a contested case before a state agency and to the judicial review of a state agency's final decision in a contested case.

**H.B. 2266**, Relating to operation under a license issued by a state agency on reversal and remand of a contested case relating to the license.

**H.B. 2267**, Relating to the types of permit or license which may be held by a wine only package store permittee.

**H.B. 2296**, Relating to the creation of a voluntary cleanup program for solid and hazardous wastes.

**H.B. 2330**, Relating to the statute of limitations for personal injury or death as a result of a sexual assault.

**H.B. 2342**, Relating to an exemption from tuition and fees at a public institution of higher education for peace officers disabled in the line of duty.

**H.B. 2345**, Relating to the regulation of slaughterers by a county; providing a penalty.

**H.B. 2377**, Relating to the provision and administration of mental health and mental retardation services.

**H.B. 2402**, Relating to the regulation of tattoo studios.

**H.B. 2405**, Relating to municipal court proceedings in a municipality participating with another municipality in a joint police department contract.

**H.B. 2422**, Relating to the authority of a court to order a defendant convicted of a misdemeanor to pay restitution in lieu of a fine.

**H.B. 2428**, Relating to the maintenance and use of certain criminal history record information.

**H.B. 2429**, Relating to the control of and disabling of gambling devices, equipment, or paraphernalia while an ocean-going vessel is in the territorial waters of this state.

**H.B. 2448**, Relating to information from and policies of certain state agencies and the analysis of some of the information and policies.

**H.B. 2460**, Relating to the possession, purchase, sale, distribution, and receipt of cigarettes and tobacco products; providing penalties.

**H.B. 2477**, Relating to authorizing the School Land Board to allow owners of the soil to waive agency rights and to lease oil, gas, and other minerals in, on, and under mineral classified lands.

**H.B. 2508**, Relating to the authority of a governmental body to hold an open or closed meeting by telephone conference call.

**H.B. 2509**, Relating to the collection of certain fees, court costs, and fines by municipalities and counties.

**H.B. 2592**, Relating to a computerized criminal history search by the Department of Public Safety of persons licensed by certain state agencies.

**H.B. 2543**, Relating to interactive access to driver's license records of the Department of Public Safety, creating access to National Driver Register (NDR) records through the Department of Public Safety, and authorizing fees for access to such information.

**H.B. 2550**, Relating to the regulation of food wholesalers and manufacturers and distributors of devices under the Texas Food, Drug, and Cosmetic Act.

**H.B. 2563**, Relating to initiatives for small businesses and rights and remedies under The Securities Act.

**H.B. 2600**, Relating to the fees required of certain persons who practice public accountancy.

**H.B. 2608**, Relating to the exemption from ad valorem taxation of certain tangible personal property held at a location for not more than a specified period.

**H.B. 2616**, Relating to special license plates.

**H.B. 2618**, Relating to the repeal of the separate reporting requirement for the Texas irrigators fund.

**H.B. 2646**, Relating to courts of inquiry under the Code of Criminal Procedure.

**H.B. 2677**, Relating to the civil liability of certain chambers of commerce.

**H.B. 2709**, Relating to certain attorney employees of the state providing pro bono legal services.

**H.B. 2710**, Relating to the applicability of the Insurance Holding Company System Regulatory Act.

**H.B. 2747**, Relating to the issuance of tuition revenue bonds for the University of Houston-Victoria.

**H.B. 2745**, Relating to user safety at unmanned teller machines.

**H.B. 2775**, Relating to the enforcement of vehicle parking ordinances in certain municipalities.

**H.B. 2793**, Relating to the regulation of insurance holding companies.

**H.B. 2796**, Relating to requiring a defendant convicted of an offense causing a death to pay child support as restitution for the offense.

**H.B. 2818**, Relating to the appointment of bailiffs for the 9th, Second 9th, 221st, 284th, and 359th district courts and the county courts at law in Montgomery County.

**H.B. 2850**, Relating to the regulation of the indoor air quality of certain school district buildings.

**H.B. 2856**, Relating to creation of the Texas Food Security Council.



**H.B. 2858**, Relating to the operation of the smart jobs fund and the employment training program created under that fund.

**H.B. 2859**, Relating to the powers, duties, and name of the Texas Commission for the Deaf and Hearing Impaired.

**H.B. 2887**, Relating to the powers and duties of certain industrial development corporations created by cities.

**H.B. 2936**, Relating to financing of certain projects for certain counties.

**H.B. 2958**, Relating to regulation of private investigators and private security agencies; providing a criminal penalty.

**H.B. 2967**, Relating to civil actions involving persons who file complaints with governmental agencies.

**H.B. 2975**, Relating to the funds of the estate of wards of certain guardianship programs.

**H.B. 3008**, Relating to loan fees charged by a bank.

**H.B. 3017**, Relating to fees charged by and to records retained by certain law enforcement agencies for fingerprinting.

**H.B. 3021**, Relating to the regulation of bingo; providing penalties.

**H.B. 3040**, Relating to adoption of certain airport zoning regulations.

**H.B. 3050**, Relating to exemption of certain funds from consolidation, re-creation of certain consolidated funds, preservation of certain dedications of revenue, and exemption of certain unappropriated amounts from use for general governmental purposes.

**H.B. 3054**, Relating to the creation of crime control and prevention districts in certain municipalities; authorizing certain taxes.

**H.B. 3086**, Relating to implementing federal energy policy through the energy management center.

**H.B. 3102**, Relating to authorizing the Texas National Research Laboratory Commission to contract with a special utility district.

**H.B. 3118**, Relating to intermediate care facilities for the mentally retarded; imposing civil and criminal penalties.

**H.B. 3119**, Relating to the exemption from dues, fees, and charges provided to a veteran or dependent of a veteran enrolled at a public institution of higher education.

**H.B. 3143**, Relating to the unauthorized use by a motor vehicle of toll roads in certain counties; providing criminal and administrative penalties.

**H.B. 3164**, Relating to the continuation, operations, and functions of the Public Utility Commission of Texas and the Office of Public Utility Counsel; providing penalties.

**H.B. 3162**, Relating to the electronic filing of financing statements and related documents.

**H.B. 3169**, Relating to the statutory county courts in Grayson County.

**H.B. 3200**, Relating to regulation of investment securities; revising Chapter 8 of the Business & Commerce Code.

**H.B. 3208**, Relating to requiring safety chains for certain vehicles towing trailers.

**H.B. 3223**, Relating to the administration, powers, and duties of the Greater Greenspoint Management District and political subdivisions contracting with the District.

**H.B. 3231**, Relating to the Brazoria County Drainage District Number 4; the powers and duties of the district; the election, terms, and compensation of district commissioners; filling vacant positions on the district board of commissioners; changing the name of the district; authorizing the issuance of bonds and imposition of a tax; and granting the power of eminent domain.

**H.B. 3232**, Relating to the election of commissioners of the Port of Beaumont Navigation District of Jefferson County.

**H.B. 3233**, Relating to the creation, administration, powers, and duties of the Upper Kirby Management District; granting the authority to issue bonds; authorizing a tax.

**H.J.R. 20**, Proposing a constitutional amendment to limit the tax rate on the income and stated capital or asset components of the franchise tax.

**H.B. 211**, Relating to the advisory function of the Texas Radiation Advisory Board.

**H.B. 3106**, Relating to special license plates relating to the armed forces.

**H.B. 3234**, Relating to the election of directors of the Hudspeth County Underground Water Conservation District No. 1.

**H.B. 18**, Relating to restrictive covenants applicable to certain residential real estate subdivisions.

**H.B. 1367**, Relating to certain acts of unfair discrimination in the business of insurance and certain methods, programs, and mechanisms for providing property and casualty insurance in underserved areas; providing administrative penalties.

**H.B. 1794**, Relating to issuance of special license plates for a forestry vehicle.

**H.B. 2006**, Relating to offenses involving the practice of immigration law and providing services to a person seeking immigration or naturalization.

**H.B. 2036**, Relating to a payroll deduction by a county employee for a charitable purpose.

**H.B. 2358**, Relating to the authority of certain municipal hospital authorities to borrow money.

**H.B. 2362**, Relating to exemptions from the study requirements applicable to local recording agents.

**H.B. 2766**, Relating to providing fairness and choice to patients and providers under managed care health benefit plans.

**H.B. 3046**, Relating to vessels and obstructions in fish passes.

Respectfully,

Cynthia Gerhardt, Chief Clerk  
House of Representatives

#### **HOUSE BILLS AND RESOLUTIONS ON FIRST READING**

The following bills and resolutions received from the House were read first time and referred to the committees indicated:

**H.J.R. 68** to Committee on Finance.

**H.J.R. 107** to Committee on Finance.

**H.C.R. 94** to Committee on State Affairs.

**H.C.R. 134** to Committee on International Relations, Trade, and Technology.

**H.C.R. 178** to Committee on State Affairs.

**H.C.R. 186** to Committee on Administration.

**H.B. 273** to Committee on Jurisprudence.

**H.B. 277** to Committee on State Affairs.

**H.B. 354** to Committee on Economic Development.

**H.B. 433** to Committee on Jurisprudence.

**H.B. 614** to Committee on Criminal Justice.

**H.B. 712** to Committee on State Affairs.

**H.B. 725** to Committee on Economic Development.

**H.B. 757** to Committee on Jurisprudence.

**H.B. 1180** to Committee on Criminal Justice.

**H.B. 1214** to Committee on Finance.

**H.B. 1305** to Committee on State Affairs.

**H.B. 1379** to Committee on Criminal Justice.

**H.B. 1420** to Committee on Jurisprudence.

**H.B. 1511** to Committee on Economic Development.

**H.B. 1622** to Committee on Finance.

**H.B. 1697** to Committee on Education.

**H.B. 1817** to Committee on Jurisprudence.

**H.B. 1987** to Committee on Economic Development.

**H.B. 2331** to Committee on Jurisprudence.

**H.B. 2389** to Committee on State Affairs.

**H.B. 2418** to Committee on Criminal Justice.

**H.B. 2558** to Committee on Criminal Justice.

**H.B. 2987** to Committee on Jurisprudence.

**H.B. 3049** to Committee on Finance.

**H.B. 3226** to Committee on Natural Resources.

#### MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas

May 15, 1995

TO THE SENATE OF THE SEVENTY-FOURTH LEGISLATURE,  
REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

TO BE A MEMBER OF THE TEXAS COMMISSION ON JAIL  
STANDARDS for a term to expire January 31, 2001:

PATRICK O. KEEL

3809 Spicewood Springs Road, #210

Austin, Texas 78759

Mr. Keel will be replacing Kenneth W. Anderson, Jr., of Dallas, whose term expired.

Respectfully submitted,

/s/George W. Bush

Governor of Texas

#### BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

<b>S.C.R. 128</b>	<b>S.B. 1158</b>
<b>S.C.R. 140</b>	<b>S.B. 1168</b>
<b>S.B. 344</b>	<b>S.B. 1212</b>
<b>S.B. 526</b>	<b>S.B. 1336</b>
<b>S.B. 659</b>	<b>S.B. 1454</b>
<b>S.B. 832</b>	<b>S.B. 1492</b>
<b>S.B. 1009</b>	<b>S.B. 1637</b>
<b>S.B. 1029</b>	<b>S.B. 1682</b>
<b>S.B. 1148</b>	

#### CONFERENCE COMMITTEE ON HOUSE BILL 677

Senator Bivins called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 677** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 677** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Ellis, Armbrister, Nelson, and Wentworth.

#### **SENATE BILL 532 WITH HOUSE AMENDMENT**

Senator Brown called **S.B. 532** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

##### **Committee Amendment No. 1**

Amend **S.B. 532** by deleting SECTION 2 and inserting in lieu thereof the following:

SECTION 2. The change in law made by Section 1 of this Act applies to contracts in effect on the effective date of this Act and to contracts awarded after the effective date of this Act.

The amendment was read.

Senator Brown moved to concur in the House amendment to **S.B. 532**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 482 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **S.B. 482**. The Conference Committee Report was filed with the Senate on Friday, May 12, 1995.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 1228 WITH HOUSE AMENDMENT**

Senator Barrientos called **S.B. 1228** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

##### **Floor Amendment No. 1**

Amend **S.B. 1228** as follows:

(1) In Section 61.791, Education Code, as added by SECTION 1 of the bill (House committee printing page 1, between lines 14 and 15), insert the following:

(3) "Educational institution" means an institution of higher education, private or independent institution of higher education, private postsecondary educational institution, or educational or training establishment, as those terms are defined in Chapter 61, Education Code.

(2) In Section 61.793, Education Code, as added by SECTION 1 of the bill (House committee printing page 1, lines 21-22), strike "institution of higher education" and substitute "educational institution".

(3) In Section 61.794(a), Education Code, as added by SECTION 1 of the bill (House committee printing page 2, line 5), strike "institution of higher education" and substitute "educational institution".

(4) In Section 61.794(c), Education Code, as added by SECTION 1 of the bill (House committee printing page 2, line 19), strike "institution of higher education's" and substitute "educational institution's".

(5) In Section 61.794(c), Education Code, as added by SECTION 1 of the bill (House committee printing page 3, line 1), strike "institution of higher education" and substitute "educational institution".

(6) In Section 61.794(f), Education Code, as added by SECTION 1 of the bill (House committee printing page 3, line 6), strike "institution of higher education" and substitute "educational institution".

(7) In Section 61.795(a), Education Code, as added by SECTION 1 of the bill (House committee printing page 3, lines 15-16), strike "institution of higher education" and substitute "educational institution".

(8) In Section 61.796(a), Education Code, as added by SECTION 1 of the bill (House committee printing page 3, lines 24-25), strike "institution of higher education" and substitute "educational institution".

(9) In Section 61.796(b), Education Code, as added by SECTION 1 of the bill (House committee printing page 4, lines 11 and 16), strike "institution of higher education" and substitute "educational institution".

(10) In Section 61.796(c), Education Code, as added by SECTION 1 of the bill (House committee printing page 4, line 24), strike "institution of higher education" and substitute "educational institution".

(11) In Section 61.796(e), Education Code, as added by SECTION 1 of the bill (House committee printing page 5, lines 12 and 13), strike "institution of higher education" and substitute "educational institution".

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1228** by a viva voce vote.

#### CONCLUSION OF MORNING CALL

The President at 10:19 a.m. announced the conclusion of morning call.

#### COMMITTEE SUBSTITUTE HOUSE BILL 2587 ON SECOND READING

On motion of Senator Brown, on behalf of Senator Sims, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**C.S.H.B. 2587**, Relating to the regulation of certain aboveground and underground storage tanks and the regulation of underground storage tank installers; providing penalties.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.H.B. 2587** as follows:

On page 8, line 68, strike "Section 26.3752" and substitute "Section 26.3572".

The amendment was read and was adopted by a viva voce vote.

**RECORD OF VOTE**

Senator Bivins asked to be recorded as "Present-not voting" on the adoption of the amendment.

The bill as amended was passed to third reading by a viva voce vote.

**RECORD OF VOTE**

Senator Bivins asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2587 ON THIRD READING**

Senator Brown, on behalf of Senator Sims, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2587** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Bivins.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTE**

Senator Bivins asked to be recorded as "Present-not voting" on the final passage of the bill.

**HOUSE JOINT RESOLUTION 64 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.J.R. 64**, Proposing a constitutional amendment exempting from ad valorem taxation the residence homestead of the surviving spouse of an elderly person.

The resolution was read second time and was passed to third reading by a viva voce vote.

**RECORD OF VOTE**

Senator Leedom asked to be recorded as "Present-not voting" on the passage of the resolution to third reading.

**HOUSE JOINT RESOLUTION 64 ON THIRD READING**

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.J.R. 64** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Leedom.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

**RESOLUTIONS SIGNED**

The President announced the signing of the following enrolled resolutions in the presence of the Senate:

**H.C.R. 197**

**H.C.R. 201**

**HOUSE BILL 1127 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1127**, Relating to the exemption from ad valorem taxation of the residence homestead of the surviving spouse of an elderly person.

The bill was read second time.

Senator Henderson offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **H.B. 1127** by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION \_\_\_\_\_. (a) This section applies only to a county with a population of more than 225,000.

(b) An exemption from ad valorem taxation adopted by the commissioners court of a county under Section 11.13(n), Tax Code, after May 1, 1995, for the 1995 tax year is validated as of the date the exemption was adopted.

(c) The ad valorem taxation proceedings of the county occurring after the adoption of the exemption are validated and may not be held invalid because the exemption under Section 11.13(n), Tax Code, was not adopted in accordance with that section.

(d) This section does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or



(2) has been held invalid by a final judgment of a court of competent jurisdiction.

(c) This section expires January 1, 1996.

The committee amendment was read and was adopted by a viva voce vote.

#### **RECORD OF VOTE**

Senator Leedom asked to be recorded as "Present-not voting" on the adoption of the committee amendment.

The bill as amended was passed to third reading by a viva voce vote.

#### **RECORD OF VOTE**

Senator Leedom asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

#### **HOUSE BILL 1127 ON THIRD READING**

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1127** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Leedom.

The bill was read third time and was passed by a viva voce vote.

#### **RECORD OF VOTE**

Senator Leedom asked to be recorded as "Present-not voting" on the final passage of the bill.

#### **CAPITOL PHYSICIAN**

Senator Barrientos was recognized and presented Dr. Jacqueline Kerr of Austin as the "Doctor for the Day."

The Senate welcomed Dr. Kerr and thanked her for her participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

**(Senator Truan in Chair)**

#### **HOUSE BILL 1504 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1504**, Relating to the funding and operation of the program to aid certain impaired pharmacists and pharmacy students.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 1504 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1504** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**HOUSE BILL 1542 ON SECOND READING**

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1542**, Relating to placement and replacement of evidence of registration of certain vehicles.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 1542 ON THIRD READING**

Senator Leedom moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1542** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**HOUSE BILL 1659 ON SECOND READING**

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1659**, Relating to the Texas Board of Mental Health and Mental Retardation.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 1659 ON THIRD READING**

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1659** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Bivins.

(President in Chair)

**COMMITTEE SUBSTITUTE  
SENATE BILL 718 ON SECOND READING**

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 718**, Relating to the regulation of the practice of chiropractic; providing a penalty.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.S.B. 718** by striking everything under the enacting clause and inserting the following:

**SECTION 1.** Section 1, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

**Sec. 1. (a)** A person shall be regarded as practicing chiropractic within the meaning of this Act if the person:

(1) uses objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body;

(2) ~~performs non-surgical, non-incisive [uses adjustment, manipulation or other] procedures, including adjustment and manipulation,~~ in order to improve the subluxation complex or the biomechanics of the musculoskeletal system; or

(3) holds himself out to the public as a chiropractor or uses the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms in connection with his name. The term "chiropractic physician" may be used for the express purpose of filing a claim for necessary services within the definition of chiropractic under this Act when the billing for such services has universally applied, predetermined coding or description requirements that are a prerequisite to appropriate reimbursement. A chiropractor may not advertise using the term "physician", "chiropractic physician", or any combination or derivation of the term "physician".

(b) The practice of chiropractic shall not be construed to include incisive or surgical procedures, prescribing of controlled substances or dangerous drugs.

(c) In this Act, "incisive procedure" includes entry into any tissue, cavity or organ by any person or implement. It does not include examination of the ear, nose and throat, drawing blood for the purposes of diagnostic testing, or acupuncture or needle EMG if the chiropractor is certified to perform acupuncture or needle EMG under Section 13b(d) of this Act.

**SECTION 2.** Subsection (h), Section 3, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) The members of the Texas Board of Chiropractic Examiners shall be divided into three (3) classes, one, two and three, and are appointed for staggered six-year terms, with three members' terms expiring on February 1 of each odd-numbered year. No person may be appointed to serve more than two terms. The president of the Board shall be a licensed doctor of chiropractic. Members hold office for their terms and until their successors are duly appointed and qualified. In case of death or resignation of a member of the Board, the Governor shall appoint another to take his place for the unexpired term only.

SECTION 3. Subsection (c), Section 4, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes) is amended to read as follows:

(c) The Board shall adopt ~~[guidelines]~~ rules for ~~[educational preparation]~~ regulation and enforcement of this Act. ~~[for all aspects of the practice of chiropractic. The Board may not adopt rules relating to the meaning of the practice of chiropractic under this Act except for:~~

~~[(1) a rule relating to an adjustment, manipulation, or other procedure directly related to improving the subluxation of the spine or of the musculoskeletal system as it directly relates to improving subluxation of the spine; or~~

~~[(2) a rule that defines an unacceptable practice of chiropractic and provides for a penalty under this Act]~~ The Board shall issue all opinions based upon a vote of a majority of the Board at a regular or called meeting. The issuance of a disciplinary action or disciplinary order of the Board is not limited by this Subsection.

SECTION 4. Section 5a, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor. If it is shown at a trial of an offense under this section that the defendant has previously been convicted under this section, the offense is a felony of the third degree. Each day of violation constitutes a separate offense.

SECTION 5. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Civil Statutes), is amended by adding Section 12b to read as follows:

Sec. 12b (a) The advisory commission to the Texas Board of Chiropractic Examiners is created. The advisory commission shall advise the Board on scientific and technical matters regarding new and experimental diagnostic and treatment practices, procedures or instruments that are within the definition of chiropractic as set out in Sec. 1 of this Act.

(b) The advisory commission shall be composed of:

(1) three persons who are licensees of the Board and who are appointed by the Board;

(2) two licensees from chiropractic colleges in this state appointed by the Board from a list submitted by the president or governing body of each college;

(3) two licensees of the Texas State Board of Medical Examiners who are designated by that board;

(4) one licensee of the Board of Nurse Examiners who is designated by that Board;

(5) one licensee of the State Board of Pharmacy who is designated by that board.

(c) Each member of the advisory commission serves at the pleasure of the authority that appointed the member to the advisory commission.

(d) The chair of the advisory commission shall be selected from among the three members of the Board who are licensed doctors of chiropractic.

(e) The members of the advisory commission shall serve without compensation but are entitled to reimbursement for actual expenses incurred in carrying out official duties, subject to the approval of the chair of the advisory commission.

SECTION 6. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 13b to read as follows:

Sec. 13b. (a) Notwithstanding any other provision in this Act, the Board shall adopt a process to certify chiropractors to perform manipulation under anesthesia. The process shall include, but not be limited to, a requirement that the chiropractor demonstrate competence by submitting proof of successful completion of a postgraduate course in manipulation under anesthesia offered by a chiropractic college accredited by the Council on Chiropractic Education.

(b) A chiropractor certified by the Board to perform manipulation under anesthesia shall perform the procedure in a setting which provides immediate access to emergency medical care. Anesthesia shall only be administered by a medical or osteopathic doctor licensed by the Texas State Board of Medical Examiners to administer anesthesia, who shall be present throughout the chiropractic procedure.

(c) The Board shall adopt rules for the use of manipulation under anesthesia by a chiropractor, including the indications and contraindications for its use. In adopting these rules, the Board shall consult with the advisory commission.

(d) The Board shall adopt a process to certify chiropractors to perform acupuncture and needle EMG. The process shall include, but not be limited to, a requirement that the chiropractor demonstrate competence by submitting proof of successful completion of a postgraduate course in acupuncture or needle EMG offered by a chiropractic college accredited by the Council on Chiropractic Education. The Board shall adopt rules for the use of acupuncture and needle EMG by a chiropractor, including the indications and contraindications for use. In adopting these rules, the Board shall consult with the advisory commission.

SECTION 7. Section 14b, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14b. (a) The Board may require evidence of proper training, precaution, and safety in the use of analytical and diagnostic x-ray in conformity with the provisions of Chapter 401, Health and Safety Code, and in conformity with all rules and regulations of the Texas Radiation Control Agency and the Texas State Department of Health. Nothing in this section [herein] shall be deemed to alter, modify, or amend the provisions of Section 1 of this Act~~[- Chapter 94, Acts of the 51st Legislature, 1949, as amended (Article 4512b, Vernon's Civil Statutes);]~~ or to enlarge in any manner the scope of the practice of chiropractic or the acts which a chiropractor is authorized to perform; and, provided further, that nothing in this section [herein] shall be deemed to alter, modify, or amend the provisions of Article 4510, Revised Civil Statutes of Texas, 1925, as amended. The Board shall implement any federal law and state law requirements relating to radiologic training of the employees of a chiropractor.

(b) The Board may, insofar as no conflict with other law exists, adopt a certification process to differentiate chiropractic licensees who have successfully completed advanced, postgraduate training at a chiropractic college accredited by the Council on Chiropractic Education or who have obtained certification through a national chiropractic board.

SECTION 8. Section 14c, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14c. (a) The Board shall appoint an enforcement committee to oversee and conduct the investigation of complaints filed with the Board under this Act and to perform other duties related to enforcement as directed by the Board. The enforcement committee is composed of three~~[-~~ (1) two or more] Board members, two ~~[at least one]~~ of whom are doctors ~~[is a doctor]~~ of chiropractic and ~~[at least]~~ one of whom is a representative of the general public;

~~[(2) the executive director; and~~

~~[(3) a representative of the attorney general's office.]~~

(b) The Attorney General shall provide legal counsel to the enforcement committee concerning the investigation and disposition of complaints and other enforcement matters.

Sec. 14c.1. (a) The Board shall keep an information file about each complaint filed with the Board and referred to the enforcement committee. The Board's information file shall contain a record for each complaint of:

(1) all persons contacted in relation to the complaints;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is received by the Board that the Board has authority to resolve, the Board, at least as frequently as semi-annually and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The Board by rule shall adopt a form to standardize information concerning complaints made to the Board. The Board by rule shall prescribe information to be provided to a person when the person files a complaint received by the Board.

(d) The Board shall provide reasonable assistance to a person who wishes to file a complaint.

(e) The Board by rule shall adopt procedures concerning the retention of information files on licensees and the expunction of files on licensees including complaints, adverse reports and other investigative information on licensees.

Sec. 14c.2. (a) The Board shall adopt rules concerning the investigation of complaints filed with the Board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint;
- (4) ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.

(b) ~~(e)~~ The Board shall dispose of all complaints in a timely manner. The Board shall establish a time line for conducting each phase of a complaint that is under the control of the Board not later than the 30th day after the date the complaint is received by the Board. The time line shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the time line must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) ~~(d)~~ The executive director of the Board shall notify the Board of a complaint that extends beyond the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.

SECTION 9. Section 19, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. Except as provided by Section 5a of this Act, a person who ~~Whoever~~ violates any provision of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not more than thirty (30) days.

SECTION 10. (a) Any rule adopted or proposed for adoption by the Texas Board of Chiropractic Examiners on or after September 1, 1994, must be reviewed and amended in conformance with this Act except for a rule relating to:

- (1) procedures for the conduct of a contested case held under Chapter 2001, Government Code (Administrative Procedure Act); or
- (2) internal operating procedures.

(b) Not later than December 1, 1996, the Texas Board of Chiropractic Examiners shall submit a report to the governor, lieutenant governor, and speaker of the house of representatives on the results of the review and rulemaking actions under Subsection (a) of this section.

SECTION 11. The comptroller, under the authority of Section 403.022, Government Code, shall perform a review and shall analyze the effectiveness and efficiency of the policy, management, fiscal affairs, and operation of the Texas Board of Chiropractic Examiners. The report shall be made before January 10, 1997.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

#### **RECORD OF VOTE**

Senator Barrientos asked to be recorded as voting "Nay" on the adoption of the amendment.

The bill as amended was passed to engrossment by a viva voce vote.

#### **RECORD OF VOTE**

Senator Barrientos asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### **COMMITTEE SUBSTITUTE SENATE BILL 718 ON THIRD READING**

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 718** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Barrientos.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

#### **HOUSE BILL 1295 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1295**, Relating to the regulation of certain securities.

The bill was read second time and was passed to third reading by a viva voce vote.



**HOUSE BILL 1295 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1295** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 1298 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1298**, Relating to access to criminal history record information by the banking commissioner.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 1298 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1298** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Truan in Chair)

**COMMITTEE SUBSTITUTE****HOUSE BILL 1989 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**C.S.H.B. 1989**, Relating to the underground storage of appropriated water incidental to a beneficial use.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.H.B. 1989** in Section 2 of the bill by striking proposed Section 11.153(a)(2), Water Code, and substituting:

"(2) the Carrizo-Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt counties;".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1989 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1989** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 867 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 867**, Relating to an automated system for providing reimbursements to nursing homes under the state Medicaid program.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 867 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 867** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 3003 ON SECOND READING**

On motion of Senator Lucio, on behalf of Senator Sims, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 3003**, Relating to the control and eradication of cotton pests by the Department of Agriculture.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **H.B. 3003** as follows:

1) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.001, Agriculture Code by adding new subparagraphs 4, 6, 12, 23 and 27 to read as follows, by deleting subparagraph 20 and by renumbering the subsequent subparagraphs accordingly:

(4) "Application of a herbicide" means the spreading of a herbicide on real property having a continuous boundary line.

(6) "Department" means the Department of Agriculture.

(12) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).

(23) "Registrant" means a person who under this chapter has registered a pesticide.

(27) "Worker protection standard" means the federal worker protection standard as found in the Code of Federal Regulations, 40 C.F.R. Parts 156 and 170.

2) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.003(d), Agriculture Code, to read as follows:

(d) At the direction of the Texas Natural Resource Conservation ~~Water~~ Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall consider any formal request to add any pesticide to the state-limited-use list under Subsection (b), and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.

3) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.006(b), Agriculture Code, to read as follows:

(b) The department may ~~shall~~ make or provide for sample tests of a pesticide on request and may charge and collect a fee for the tests in an amount necessary to cover expenses incurred in making or providing for the tests.

4) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.007(b), Agriculture Code, to read as follows:

(b) The Texas Natural Resource Conservation ~~Water~~ Commission shall have principal authority to regulate and control water pollution. The department shall cooperate with the Texas Groundwater Protection Committee in developing and implementing federally mandated state management plans for pesticides in groundwater in accordance with Section 26.407, Water Code. If the United States Environmental Protection Agency adopts a final rule requiring states to implement a state management plan for pesticides in groundwater, then the department may by rule assess an additional pesticide registration fee in an amount determined by the department, to recover the department's costs and the costs of other state agencies in implementing, monitoring, and managing all aspects of a state management plan for pesticides in groundwater.

5) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.041, Agriculture Code, by amending Subsection (a), and adding new Subsections (e), (f), (g) and (h), to read as follows:

(a) Except as provided by Subsection (b), ~~(c), (d) or (e)~~ (c), of this section, before a pesticide is distributed in this state or is delivered for transportation or is transported in intrastate commerce or between points

within this state through a point outside the state, it must be registered with the department. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(e) Registration is not required for a pesticide that is not for use in this state and is only being manufactured, transported, or distributed for use outside of this state.

(f) The Texas Feed and Fertilizer Control Service may not register under Chapter 63 a fertilizer that contains a pesticide that must be registered with the department under this chapter unless the constituent pesticide is first registered with the department. The Texas Feed and Fertilizer Control Service shall consult with the department about the current registration status of a pesticide before registering any fertilizer mix containing that pesticide under Chapter 63. The department shall notify the Texas Feed and Fertilizer Control Service of any changes to a pesticide registration.

(g) A pesticide that has been registered with the department must be currently registered as long as the pesticide remains in the channels of trade in this state. It is the registrant's responsibility to ensure that the pesticide remains currently registered.

(h) If the department issues a stop use, stop distribution, or removal order concerning a pesticide because the pesticide is not currently registered with the department, the registrant if the registration has expired or the person required to register the pesticide if the pesticide was never registered is responsible for taking the necessary actions to remedy the situation. The necessary actions may include reimbursing persons who are subject to the stop use, stop distribution, or removal order for the persons' costs in complying with the order.

6) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.042(a)(3), Agriculture Code, to read as follows:

(3) a complete copy of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use and, if the pesticide is required to be registered with the United States Environmental Protection Agency, a copy of the Environmental Protection Agency stamped accepted labeling and any applicable comment pages;

7) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.045, Agriculture Code, to read as follows:

Sec. 76.045. DEPARTMENT APPROVAL. The department may not approve an application for registration unless the department finds that[:

~~[(1) the composition of the pesticide warrants the proposed claims made for it; and~~

~~[(2)]~~ the pesticide, its labeling, and other materials required to be submitted under this chapter comply with the requirements of this chapter.

8) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.105, Agriculture Code, by amending subsections (b), (c) and (d) to read as follows:

(b) An individual is under the direct supervision of a licensed noncommercial, ~~licensed commercial~~, or [a] licensed private applicator if the individual is acting under the instructions and control of a licensed noncommercial, ~~licensed commercial~~, or [a] licensed private applicator who is responsible for the actions of the individual and who is available if and when needed. A licensed applicator may not supervise an applicator whose license or certificate is under suspension or revocation. The licensed noncommercial, ~~licensed commercial~~, or licensed private applicator is not required to be physically present at the time and place of the pesticide application unless the label of the applied pesticide states that the presence of the licensed applicator is required.

(c) Except as provided under Section 76.003(e), a person may not purchase a restricted-use or state-limited-use pesticide unless the person is a licensed or a certified applicator or authorized by a licensed or certified applicator to purchase or take delivery for the applicator ~~[An individual is under the direct supervision of a licensed commercial applicator if the individual is acting under the instructions and control of a licensed commercial applicator who is responsible for the actions of the individual and who is continuously physically present at the time and place of the pesticide application.]~~

(d) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of [the particular] pesticides ~~[being used by the individual]~~. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision has been trained as a handler under the federal worker protection standard ~~[attends a program conducted by the department that is designed to make the person knowledgeable of the label requirements and rules and regulations governing the use of pesticides].~~

9) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ Amend Section 76.111, Agriculture Code, by amending Subsections (a), (b), (f) and (j) adding a new Subsection (l) to read as follows:

(a) Except as otherwise provided by this section, each applicant for a commercial applicator license shall file with the department ~~[regulatory agency]~~ issuing the license[:

~~[(1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or~~

~~[(2)] a liability insurance policy, or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant.~~

(b) If the Texas Department of Insurance determines that the liability insurance policy required by Subsection (a) is not generally and reasonably available to commercial pesticide applicators, then in lieu of the requirements of Subsection (a), an applicant for a commercial applicator license shall:

(1) file with the department property damage and personal injury insurance or certification of such insurance that is generally and reasonably available as determined by the Texas Department of Insurance; or

~~(2) comply with other proof of financial responsibility requirements adopted by rule of the department under this subchapter [if an applicant cannot reasonably obtain insurance coverage or a bond as specified by Subsection (f) of this section, the regulatory agency shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (c) of this section].~~

(f) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than an aggregate of \$200,000 for bodily injury and property damage ~~[\$100,000 for property damage and may not be less than \$100,000 for bodily injury]~~. The department ~~[head of a regulatory agency]~~ by rule may require higher ~~[different]~~ amounts of coverage for different classifications of operations under this chapter. At all times during the license period, the coverage must be maintained at not less than the amount set by the department ~~[agency head]~~ or the Texas Department ~~[State Board]~~ of Insurance, except as provided by Subsection (l) [as applicable].

(j) Should the insurance policy ~~[surety]~~ furnished under this section become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new ~~[bond,]~~ liability insurance policy ~~[, or any other proof of financial responsibility]~~ as authorized by rule of the department, except as provided under Subsection (l) [regulatory agency]. A licensee may not operate as a commercial applicator during an uncovered period. Failure to file or maintain a liability insurance policy with the proper insurance coverage while applying restricted-use or state-limited-use pesticides as a commercial applicator ~~[a bond, liability insurance policy, or other proof of authorized financial responsibility or failure to maintain the surety in the required amount]~~ is a ground for suspension or revocation of a commercial applicator license, an assessment of an administrative penalty, or both.

(l) A licensed commercial applicator does not need to maintain insurance coverage as required by this section if the applicator provides written notice to the department that the applicator will not operate as a commercial applicator, applying or supervising restricted-use or state-limited-use pesticides or regulated herbicides during an uncovered period. Such written notice must be received by the department prior to cancellation of the insurance policy required by this section.

10) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_\_. Amend Sections 76.112(f) and (j), Agriculture Code, to read as follows:

(f) The department ~~[head of a regulatory agency]~~ may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service or another training course approved by the department. The department shall approve appropriate training courses developed under the coordination of the Texas Agricultural Extension Service and to be conducted by other governmental agencies or nongovernmental entities. The training course shall cover the use, effects, and risks of restricted-use and state-limited-use pesticides.

(j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted-use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section. A certified private applicator may not supervise the use of restricted-use and state-limited-use pesticides.

11) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.115(a), Agriculture Code, to read as follows:

(a) The department may inspect [Each regulatory agency shall provide for the registration and inspection of] equipment used in the [commercial] application of a restricted-use or state-limited-use pesticide.

12) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.116, Agriculture Code, by adding a new Subsection (e) to read as follows:

(e) Any applicator whose license or certificate is under suspension or revocation by the department may not apply restricted-use or state-limited-use pesticides under the direct supervision of another licensed applicator during that period of suspension or revocation.

13) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Chapter 76, Agriculture Code, by adding a new Subchapter G to read as follows:

#### SUBCHAPTER G. HERBICIDES

Sec. 76.141. REGULATED HERBICIDES. (a) After a public hearing on the issue, and in accordance with Subsection (b), the department by rule may adopt a list of regulated herbicides for the state or for one or more designated areas in the state.

(b) The department may include a herbicide on the list of regulated herbicides if the department determines that, if used as directed or in accordance with widespread and commonly recognized practice, the herbicide requires additional restrictions to prevent a hazard to desirable vegetation through drift or other uncontrolled application.

Sec. 76.142. APPLICATION OF REGULATED HERBICIDE. (a) If a person applies a regulated herbicide, the person shall act in accordance with rules adopted by the department, including rules adopted under this subchapter.

Sec. 76.143. COUNTY HERBICIDE REGULATIONS. (a) If the commissioners court of a county determines that a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide exists in an area of the county and that a departmental rule adopted or prohibition prescribed under Section 76.141 or 76.142 not currently applicable to the area should apply to the area, the commissioners court may enter an order in the minutes of the court under which the department's rule or prohibition under Section 76.141 or 76.142 becomes

effective in the specified area of the county beginning January 1 of the following year.

(b) If the commissioners court of a county determines that there is no longer a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide in the specified area of the county, the court may rescind its order under Subsection (a) effective January 1 of the following year.

(c) The department shall adopt rules concerning the procedures by which a commissioners court administers the requirements of this section.

14) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Amend Section 76.153(a), Agriculture Code, to read as follows:

(a) If the department has reason to believe that a pesticide is in violation of any provision of this chapter, the department may issue and enforce a written or printed order to stop the use, distribution, or use and distribution [sale] of the pesticide or requiring the pesticide to be removed and secured from further distribution or use. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order may not sell, distribute, or use the pesticide until the department determines that the pesticide:

(1) is in compliance with this chapter; or

(2) does not present a hazard to the public health, safety, or welfare.

15) Add a new SECTION \_\_\_\_ to read as follows:

SECTION \_\_\_\_ . Chapter 75 and Sections 76.021(b), 76.111(c), 76.111(k), 76.115(c) and 76.115(d), Agriculture Code, are repealed.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

#### HOUSE BILL 3003 ON THIRD READING

Senator Lucio, on behalf of Senator Sims, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 3003** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### MESSAGE FROM THE HOUSE

House Chamber  
May 15, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**S.C.R. 152**, Commending Belen Robles for her contributions to the League of United Latin American Citizens.



**H.B. 137**, Relating to the criminal responsibility and civil liability of certain persons for the conduct of a child; providing a criminal penalty.

**H.B. 1632**, Relating to protective orders for family violence; providing penalties.

**H.B. 2072**, Relating to the licensing and regulation of public adjusters; providing criminal penalties.

**H.B. 2457**, Relating to the licensing and regulation of the practice of art therapy.

**H.B. 2491**, Relating to certain environmental permitting procedures of the Texas Natural Resource Conservation Commission.

**H.B. 2891**, Relating to reports to the legislature by state health and human services agencies and to the long-term care state plan for the elderly.

**H.B. 2941**, Relating to the appraisal of property for tax purposes, the assessment and administration of property taxes, and the disclosure of property tax liabilities.

**H.B. 3028**, Relating to security deposits and application deposits provided by residential tenants and prospective residential tenants and lease obligations of certain successor landlords; providing a civil penalty.

**H.B. 3193**, Relating to the creation, administration, powers, duties, operation, and financing of the Southwest Travis County Water District.

The House refused to concur in Senate amendments to **H.J.R. 50** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Hernandez, Chair; Romo, Chisum, Elkins, and Gutierrez.

**H.B. 2083**, Relating to the issuance of special license plates and parking placards for vehicles owned by or transporting disabled persons and the enforcement of the law relating to parking by or for disabled persons.

Respectfully,

Cynthia Gerhardt, Chief Clerk  
House of Representatives

#### **CONFERENCE COMMITTEE ON HOUSE JOINT RESOLUTION 50**

Senator Barrientos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.J.R. 50** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.J.R. 50** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Zaffirini, Ellis, Bivins, and Turner.

#### **HOUSE BILL 3104 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 3104**, Relating to an exemption of certain charitable gift annuities from regulation under the Insurance Code.

The bill was read second time and was passed to third reading by a viva voce vote.

#### **HOUSE BILL 3104 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 3104** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 1543 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1543**, Relating to the regulation of banking and of entities under the jurisdiction of state banking regulatory officials; providing administrative and criminal penalties.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

#### **Committee Amendment No. 1**

Amend **H.B. 1543** (House engrossment printing) as follows:

(1) On page 257, line 4, through page 261, line 7, strike Sections 14-18 of the bill and renumber the subsequent sections accordingly.

(2) On page 272, line 22, between "Section 38 of this Act" and "take", insert ", and Chapter 9 of the Texas Banking Act as added by this Act".

The committee amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **H.B. 1543** in SECTION 1 of the bill, on page 10, line 15, by adding new subsection (f) to Sec. 1.011 to read as follows:

(f)(1) The Finance Commission shall:

(i) conduct research on the availability, quality, and prices of financial services, including lending and depository services, offered in the state to agricultural businesses, small businesses, and individual consumers in the state; and

(ii) conduct research on the practices of business entities in the state that provide financial services to agricultural businesses, small businesses, and individual consumers in the state.

(2) The Finance Commission shall have the authority to apply for and receive public and private grants and gifts to conduct the research authorized in this subsection.

(3) The Finance Commission shall have the authority to contract with public and private entities to carry out studies and analysis under this section.

(4) Not later than December 1 of each year, the Finance Commission shall provide to the Legislature a report detailing its findings and making recommendations to improve the availability, quality, and prices of financial services.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 1543 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1543** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**(Senator Lucio in Chair)**

**HOUSE BILL 2245 ON SECOND READING**

On motion of Senator Armbrister, on behalf of Senator Sims, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 2245**, Relating to the continuation and functions of the Texas Animal Health Commission; providing administrative and criminal penalties.

The bill was read second time.

Senator Nixon offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **H.B. 2245** as follows:

(1) On page 16, line 24, following "penalty," add the following new language "The amount of the penalty shall not be based on a per head basis."

The amendment was read and was adopted by a viva voce vote.

Senator Truan offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **H.B. 2245** by adding the following Section and renumbering appropriately:

SECTION \_\_\_\_\_. Subchapter C, Chapter 161, Agriculture Code, is amended by adding Section 16.0411 to read as follows:

Sec. 161.0411. FEES FOR DISEASE-CONTROL PROGRAMS. (a) The commission may set and collect fees as necessary to recover the cost of administering disease-control programs.

(b) The commission shall submit to the legislature with the commissions's appropriations request a fee schedule for recovering costs of services provided by the commission.

(c) The commission may exempt specific programs from the cost-recovery requirments of this section.

The amendment was read.

On motion of Senator Armbrister, Floor Amendment No. 2 was tabled by the following vote: Yeas 18, Nays 9.

Yeas: Armbrister, Bivins, Brown, Cain, Galloway, Harris, Haywood, Henderson, Lucio, Madla, Moncrief, Montford, Nixon, Patterson, Shapiro, Sims, Turner, Wentworth.

Nays: Barrientos, Ellis, Gallegos, Leedom, Rosson, Truan, West, Whitmire, Zaffirini.

Absent: Luna, Nelson, Ratliff, Sibley.

The bill as amended was passed to third reading by a viva voce vote.

**HOUSE BILL 2245 ON THIRD READING**

Senator Armbrister, on behalf of Senator Sims, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2245** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Luna, Nelson, Ratliff, Sibley.

The bill was read third time and was passed by a viva voce vote.

**HOUSE BILL 2349 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 2349**, Relating to the regulation of sanitary landfills.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **H.B. 2349** as follows:

1) On page 1, line 8, add the following phrase after the words "impose a" "construction or operating"

2) On page 1, line 9, add the following phrase after the word "landfill" and before the word "that":  
"which is required by the U.S. Environmental Protection Agency to operate in accordance with 40 Code of Federal Regulations Part 258."

The committee amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **H.B. 2349** as follows:

1. Add new SECTION \_\_\_\_, which amends Section 361.088, Health and Safety Code, by adding subsection (\_\_\_\_) to read as follows:

(\_\_\_\_) Solid waste generated incidental to the operation of a permitted commercial hazardous waste disposal well facility, including storage and processing residues, laboratory waste, and other hazardous and nonhazardous waste streams resulting from authorized activities at the facility, may be disposed of in an on-site or adjoining landfill if the facility is located in an arid county which receives 15 inches or less of average annual precipitation and the permittee obtains a permit modification from the commission. Compliance with the public meeting, notice, and comment requirements of Section 361.0791 and 40 C.F.R. 270.42 shall satisfy the public participation requirements of this chapter if the facility previously was the subject of a contested case hearing at the commission.

The committee amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following committee amendment to the bill:

**Committee Amendment No. 3**

Amend **H.B. 2349**, page 1, line 18 by adding at the end of the sentence "or as required by the commission for remedial activities necessary to protect human health, safety and the environment."

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

#### **HOUSE BILL 2349 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that H.B. 2349 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 949 ON SECOND READING**

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 949**, Relating to the availability to certain incarcerated individuals of public records or personal information pertaining to certain other individuals.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **H.B. 949** by adding the following appropriately numbered SECTIONS to read as follows and by renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_ . Chapter 38, Penal Code, is amended by adding Section 38.111 to read as follows:

Sec. 38.111. INMATE MISUSE OF INFORMATION GAINED THROUGH WORK PROGRAM. (a) An inmate of the institutional division or a person confined in a state jail felony facility commits an offense if with intent to obtain a benefit or with intent to harm or defraud another the inmate or person discloses or uses personal information about another that the inmate or person has access to by means of participation in a work program operated by or for the institutional division or state jail division.

(b) An offense under this section is a felony of the third degree.

SECTION \_\_\_\_ . Subchapter E, Chapter 497, Government Code, is amended by adding Section 497.097 to read as follows:

Sec. 497.097. PROHIBITION FROM PARTICIPATION IN CERTAIN WORK PROGRAMS. An inmate who has been convicted of an offense under Section 38.111, Penal Code, is prohibited from subsequently participating in any work program operated by the institutional division that provides inmates with access to personal information about persons who are not confined in the institutional division.

SECTION \_\_\_\_ . Chapter 498, Government Code, is amended by adding Section 498.0041 to read as follows:

Sec. 498.0041. FORFEITURE FOR WORK PROGRAM VIOLATIONS. If during a term of imprisonment an inmate is convicted of an offense under Section 38.111, Penal Code, the director of the institutional division shall forfeit all or any part of the inmate's accrued good conduct time.

SECTION \_\_\_\_ . Subchapter B, Chapter 507, Government Code, is amended by adding Section 507.028 to read as follows:

Sec. 507.028. PROHIBITION FROM PARTICIPATION IN CERTAIN WORK PROGRAMS. A defendant confined in a state jail felony facility who has been convicted of an offense under Section 38.111, Penal Code, is prohibited from subsequently participating in any work program operated by the state jail division that provides defendants with access to personal information about persons who are not confined in a state jail felony facility.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

#### **HOUSE BILL 949 ON THIRD READING**

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 949** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 1718 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1718**, Relating to the protection of the San Marcos River; providing civil and criminal penalties.

The bill was read second time and was passed to engrossment by a viva voce vote.

#### **SENATE BILL 1718 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1718** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

#### **HOUSE BILL 2062 ON SECOND READING**

Senator Madla asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**H.B. 2062**, Relating to the conversion to an elected board of certain mass transit authorities.

There was objection.

Senator Madla then moved to suspend the regular order of business and take up **H.B. 2062** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Haywood, Henderson, Leedom, Lucio, Madla, Montford, Nixon, Patterson, Rosson, Shapiro, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Harris, Moncrief, Wentworth.

Absent: Luna, Nelson, Ratliff, Sibley.

The bill was read second time.

Senator Madla offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **H.B. 2062** as follows:

Change the effective date in Section 2 on page 3 from "September 1, 1995" to "September 1, 1996."

The committee amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **H.B. 2062** by adding a new subsection (k) to read as follows: "Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes) is amended by changing Subsection 4(e)(2)(A) to read as follows:

Sec. 4. (e)(2)(A) in addition to the methods of removal of board members provided by Subdivisions (1) and (4) of this subsection, board members of an authority in which the rate of the sales and use tax is one percent and whose principal city has a population of more than 1,200,000 according to the most recent census and of an authority created before January 1, 1980, with a principal city having a population of less than 1,200,00 are subject to recall procedure provided for by this subdivision."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by the following vote: Yeas 24, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Haywood, Henderson, Leedom, Lucio, Madla, Montford, Nixon, Patterson, Rosson, Shapiro, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Harris, Moncrief, Wentworth.

Absent: Luna, Nelson, Ratliff, Sibley.



**HOUSE BILL 2062 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2062** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Haywood, Henderson, Leedom, Lucio, Madla, Montford, Nixon, Patterson, Rosson, Shapiro, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Harris, Moncrief, Wentworth.

Absent: Luna, Nelson, Ratliff, Sibley.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTES**

Senators Harris, Moncrief, and Wentworth asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE****SENATE BILL 34 ON SECOND READING**

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 34**, Relating to improving the judicial system in Panola County.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE****SENATE BILL 34 ON THIRD READING**

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 34** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**SENATE BILL 1704 ON SECOND READING**

Senator Shapiro asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**S.B. 1704**, Relating to the review and approval of certain permits by the state, a municipality, or other local governmental agencies.

There was objection.

Senator Shapiro then moved to suspend the regular order of business and take up **S.B. 1704** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Armbrister, Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Barrientos, Ellis, Luna, Moncrief, Rosson, Truan, West, Zaffirini.

The bill was read second time.

Senator Shapiro offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend S.B. 1704:

(1) by adding a Subsection (e) to Section 481.143 to read as follows: The provisions of this section relating to the expiration date of a permit or to the duration of a permit do not apply in the case of a permit issued by the Railroad Commission of Texas which did not have an expiration date or a specific duration when originally issued.

The committee amendment was read and was adopted by a viva voce vote.

Senator Patterson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend S.B. 1704 by striking SECTION 2 and substituting the following SECTION 2 in lieu:

SECTION 2. Nothing in this Act shall be construed to: (1) limit or otherwise affect the authority of a municipality, a county, another political subdivision, the state, or an agency of the state with respect to the implementation or enforcement of an ordinance, a rule or statutory standard of a program, plan, or ordinance that was adopted under the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments or Subtitle E, Title 2, Natural Resources Code; or (2) apply to a permit, order, rule, regulation, or other action issued, adopted, or undertaken by a municipality, a county, another political subdivision, the state, or an agency of the state in connection with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments or Subtitle E, Title 2, Natural Resources Code.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by the following vote: Yeas 23, Nays 8.

Yeas: Armbrister, Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Barrientos, Ellis, Luna, Moncrief, Rosson, Truan, West, Zaffirini.

**GUESTS PRESENTED**

Senator Ellis was recognized and introduced to the Senate Members of the Parliament from Ghana.

The Senate welcomed its distinguished guests.

**SENATE BILL 793 WITH HOUSE AMENDMENTS**

Senator Harris called **S.B. 793** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **S.B. 793** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to the enforcement of certain child support and medical support obligations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

**ARTICLE 1. POWERS AND DUTIES OF ATTORNEY GENERAL**

**SECTION 1.01.** Chapter 231, Family Code, is amended by adding Section 231.0011 to read as follows:

Sec. 231.0011. DEVELOPMENT OF STATEWIDE INTEGRATED SYSTEM FOR CHILD SUPPORT AND MEDICAL SUPPORT ENFORCEMENT. (a) The attorney general, as the Title IV-D agency for the state of Texas shall have final approval authority on any contract or proposal for delivery of IV-D services under this section, and in coordination with the Texas Judicial Council, the Office of Court Administration, the federal Office of Child Support Enforcement, state, county and local officials, shall develop and implement a statewide system for child support and medical support enforcement, employing federal, state, local and private resources to:

- (1) unify child support registry functions;
- (2) record and track all child support orders entered in the state;
- (3) establish an automated enforcement process which will use delinquency monitoring, billing and other enforcement techniques to ensure the payment of current support;
- (4) incorporate existing enforcement resources into the system to obtain maximum benefit from state and federal funding; and
- (5) ensure accountability for all participants in the process, including state, county and local officials, private contractors, and the judiciary.

(b) The attorney general shall convene a workgroup to determine a process and develop a time-table for implementation of a unified registry system, and to identify any barriers to completion of the project. The workgroup shall include representatives of the judiciary, district clerks and

domestic relations Offices, as well as other interested agencies, organizations and individuals. The workgroup shall report the results of its deliberations to the governor, lieutenant governor, speaker of the house of representatives and the attorney general on or before January 15, 1996.

(c) The attorney general shall, in cooperation with the workgroup established by this section, develop technical standards for participation in the unified child support system, including standard required data elements for effective monitoring of child support and medical support orders, and for the imposition of interest on delinquent child support.

(d) Counties and other providers of child support services shall be required, as a condition of participation in the unified system, to enter into a contract with the attorney general and comply with all federal requirements for the Title IV-D program, and to maintain at least the current level of funding for activities which are proposed to be included in the integrated child support system.

(e) The attorney general shall identify federal requirements, apply for necessary federal waivers, and provide technical system requirements and other information concerning participation in the system to counties and other providers of child support services, not later than January 15, 1996. Counties shall notify the attorney general of existing resources and options for participation not later than May 1, 1996.

(f) Not later than June 1, 1996, the attorney general shall produce a procurement and implementation plan for hardware and software necessary to implement in phases a unified statewide registry and enforcement system.

(g) Effective January 15, 1996, the attorney general may contract with any county meeting technical system requirements necessary to comply with federal law for provision of Title IV-D services in that county. All new cases in which support orders are entered in such county after the effective date of a monitoring contract shall be Title IV-D cases. Any other case in the county, subject to federal requirements and the agreement of the county and the attorney general, may be included as a Title IV-D case. Any obligee under a support order may refuse Title IV-D enforcement services unless required to accept such services pursuant to other law.

(h) Counties participating in the unified enforcement system shall monitor all child support registry cases and upon delinquency may, subject to the approval of the Title IV-D agency, provide enforcement services through:

- (1) direct provision of services by county personnel;
- (2) subcontracting all or portions of the services to private entities or attorneys; or
- (3) such other methods as may be approved by the Title IV-D agency.

(i) The attorney general shall undertake a least-cost review of its child support operations and shall use the information developed in such review to determine what, if any, contribution of program funds generated through

other Title IV-D activities should be made to the participating counties. The attorney general, in cooperation with the counties and the federal Office of Child Support Enforcement shall develop a cost allocation methodology to assist the counties in identifying county contributions which may qualify for federal financial participation.

(j) The attorney general may phase in the integrated child support registry and enforcement system, and the requirement to implement the system shall be contingent upon the receipt of locally generated funds and federal reimbursement; "locally generated funds" include, but are not limited to, funds contributed by counties and cities.

(k) The attorney general shall adopt rules to implement this section.

SECTION 1.02. Sections 231.109(b) and (d), Family Code, are amended to read as follows:

(b) The Title IV-D agency may contract with private attorneys, other private entities, or political subdivisions of the state to provide services in Title IV-D cases ~~represent this state or another state in an action brought under the authority of federal law and this chapter~~.

(d) An attorney employed to provide Title IV-D services ~~[by the Title IV-D agency or as otherwise provided by this chapter]~~ represents the interest of the state and not the interest of any other party. The provision of services by an attorney under this chapter does not create an attorney-client relationship between the attorney and any other party. The agency shall, at the time an application for child support services is made, inform the applicant that neither the Title IV-D agency nor any attorney who provides services under this chapter is the applicant's attorney and that the attorney providing services under this chapter does not provide legal representation to the applicant.

SECTION 1.03. Chapter 231, Family Code, is amended by adding Section 231.113 to read as follows:

Section 231.113. ENFORCEMENT OF SUPPORT OBLIGATIONS IN PUBLIC ASSISTANCE CASES. To the extent possible, the Title IV-D agency shall enforce a child support obligation in a case involving a child who receives financial assistance under Chapter 31, Human Resources Code, not later than the first anniversary of the date the agency receives from the Texas Department of Human Services the information the department is required to provide to assist in the enforcement of that obligation.

SECTION 1.04. Section 231.202, Family Code, is amended to read as follows:

Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D CASES. In a Title IV-D case filed under this title, the Title IV-D agency shall pay:

(1) filing fees and fees for issuance and service of process as provided by Chapter 110 of this code and by Sections 51.317, 51.318(b)(2), and 51.319(4), Government Code;

(2) fees for transfer as provided by Chapter 110;

(3) fees for the issuance and delivery of orders and writs of income withholding in the amounts provided by Chapter 110; and

(4) a fee of \$45 for each item of process to each individual on whom service is required, including service by certified or registered mail, to be paid to a sheriff, constable, or clerk whenever service of process is required; and

~~[(5) mileage costs incurred by a sheriff or constable when traveling out of the county to execute an outstanding warrant or capias, to be reimbursed at a rate not to exceed the rate provided for mileage incurred by state employees in the General Appropriations Act].~~

SECTION 1.05. Section 231.209, Family Code, is amended to read as follows:

Sec. 231.209. PAYMENT FOR SERVICES NOT AFFECTED BY THIS SUBCHAPTER. Without regard to this subchapter and specifically Section 231.205, the Title IV-D agency may pay the costs for:

(1) the services of an official court reporter for the preparation of statements of facts; and

(2) the costs for the publication of citation served by publication; and

~~(3) mileage or other reasonable travel costs incurred by a sheriff or constable when traveling out of the county to execute an outstanding warrant or capias, to be reimbursed at a rate not to exceed the rate provided for mileage or other costs incurred by state employees in the General Appropriations Act.~~

SECTION 1.06. Section 231.304, Family Code, is amended by amending Subsections (b) and (h), and adding Subsections (j), (k), (l), and (m) to read as follows:

(b) The Title IV-D agency, the Department of Human Services, the Workers' Compensation Commission and the Texas Employment Commission shall create and develop a voluntary ENHR program to provide a means for employers to assist in the state's efforts to prevent fraud in the welfare, workers' compensation and unemployment insurance programs, locate absent parents who owe child support and collect support from those parents, by reporting information concerning newly hired and rehired employees directly to a centralized state database [the child support enforcement program]. In order to encourage use of the ENHR program, employer reporting requirements shall be simplified and standardized.

(h) Subject to approval of the agencies involved and any requirements of federal law, the centralized database shall make the information on [For] each employee reported under the ENHR program available for:

(1) purposes directly connected with the administration of a plan or program for unemployment benefits, workers' compensation benefits, child support, or public assistance;

(2) an investigation or a civil or criminal prosecution relating to the administration of such plan or program; or

(3) the administration of any other Federal or Federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need [the Title IV-D agency shall retain the information only if the agency is responsible for establishing, enforcing, or collecting a support obligation or debt of the employee or reporting to

~~a court, domestic relations office, or a friend of the court the location of a parent who is denying possession of or access to a person with a valid possession order. If the agency does not have any of those responsibilities, the agency shall not create a record regarding the employee and the information contained in the notice shall be promptly destroyed.]~~

(j) An employer participating in the ENHR program is strongly encouraged to report information about health insurance coverage available through the employer in which a dependent child may be enrolled under Section 14.061, Family Code.

(k) To expand the ENHR program, the Title IV-D agency shall work closely with the Texas Employment Commission, the Texas Workers' Compensation Commission, the comptroller, the Texas Department of Commerce, the secretary of state, and employer groups. Efforts to expand the program shall include:

(1) regularly sending to employers solicitations for participation in the program and promotional information about the program that includes information on:

(A) the program's impact on child support and medical support enforcement;

(B) savings in public assistance payments attributable to the program;

(C) benefits to employers and taxpayers of the fraud prevention aspects of the program;

(D) participation requirements; and

(E) awards available for business participation; and

(2) developing a public awareness program that:

(A) stresses the importance of securing financial support for all children; and

(B) informs the public about the ENHR program.

(l) The affected agencies may pool resources, develop a cost allocation plan, determine the most cost-effective means of establishing and funding the required database, and issue rules, solicit bids, or enter into contracts to carry out the purposes of this section.

(m) The affected agencies shall implement the plan to create the ENHR database, if cost-effective, using existing funding and considering savings and revenue gains that may result from the use of such system.

SECTION 1.07. Chapter 231, Family Code, is amended by adding Section 231.305 to read as follows:

Sec. 231.305. MEMORANDUM OF UNDERSTANDING ON CHILD SUPPORT FOR CHILDREN RECEIVING PUBLIC ASSISTANCE. (a) The Title IV-D agency and the Texas Department of Human Services by rule shall adopt a memorandum of understanding governing the establishment and enforcement of court-ordered child support in cases involving children who receive financial assistance under Chapter 31, Human Resources Code. The memorandum shall require the agency and the department to:

(1) develop procedures to ensure that the information the department is required to collect to establish and enforce child support:

(A) is collected from the person applying to receive the financial assistance at the time the application is filed;

(B) is accurate and complete when the department forwards the information to the agency; and

(C) is not information previously reported to the agency;

(2) develop procedures to ensure that the agency does not duplicate the efforts of the department in gathering necessary information;

(3) clarify each agency's responsibilities in the establishment and enforcement of child support; and

(4) develop guidelines for use by eligibility workers and child support enforcement officers in obtaining from an applicant the information required to establish and enforce child support for that child.

(b) The Title IV-D agency and the Texas Department of Human Services semiannually shall review and renew or modify the memorandum as necessary.

## ARTICLE 2. ENFORCEMENT OF CHILD SUPPORT AND MEDICAL SUPPORT OBLIGATIONS

SECTION 2.01. Section 101.005, Family Code, is amended to read as follows:

Sec. 101.005. CHILD SUPPORT REVIEW OFFICER. "Child support review officer" means an individual designated and trained by a child support agency to conduct reviews under this title [~~who has received family law mediation training~~].

SECTION 2.02. Section 102.007, Family Code, is amended to read as follows:

Sec. 102.007. STANDING OF TITLE IV-D AGENCY. In providing services authorized by Chapter 231, the Title IV-D agency or a political subdivision contracting with the attorney general to provide Title IV-D services under this title may file a child support action authorized under this title, including a suit for modification or a motion for enforcement.

SECTION 2.03. Chapter 231, Family Code, is amended by adding Section 231.306 to read as follows:

Sec. 231.306. MAXIMIZING MEDICAL SUPPORT ESTABLISHMENT AND COLLECTION BY THE TITLE IV-D AGENCY.

(a) On the installation of an automated child support enforcement system, the Title IV-D agency is strongly encouraged to:

(1) maximize the collection of medical support; and

(2) establish cash medical support orders for children eligible for medical assistance under the state Medicaid program for whom private insurance coverage is not available.

(b) In this section, "medical support" has the meaning assigned by Section 101.020.

SECTION 2.04. Subchapter E, Chapter 231, Family Code, is amended to read as follows:

### SUBCHAPTER E. CHILD SUPPORT REVIEW PROCESS TO ESTABLISH OR ENFORCE SUPPORT OBLIGATIONS

Sec. 231.401. PURPOSE. The purpose of the child support review process authorized by this subchapter is to provide child support agencies



an opportunity to resolve routine child support actions through ~~[negotiation;]~~ agreement of the parties[;] or uncontested orders.

Sec. 231.402. AGREEMENTS ENCOURAGED. To the extent permitted by this subchapter, child support agencies shall make the child support review process understandable to all parties and shall encourage agreements ~~[through mediation]~~.

Sec. 231.403. BILINGUAL FORMS REQUIRED. A notice or other form used to implement the child support review process shall be printed in both Spanish and English.

Sec. 231.404. INTERPRETER REQUIRED. If a party participating in a negotiation conference does not speak English or is hearing impaired, the child support agency shall provide for interpreter services at no charge to the parties.

Sec. 231.405. INITIATING CHILD SUPPORT REVIEW. ~~[(a) A child support agency may review and assess the financial resources of a child's parent or of a person presumed or alleged to be the child's father from whom child support is requested to determine the resources that are available for the support of the child and to determine what action is appropriate.~~

~~[(b)]~~ An administrative action under this subchapter may be initiated by issuing a notice of child support review to each party entitled to notice ~~[the parents and to the presumed or alleged father of a child]~~.

Sec. 231.406. CONTENTS OF NOTICE OF CHILD SUPPORT REVIEW. (a) The notice of child support review must:

- (1) describe the procedure for a child support review;
- (2) inform the recipient that the recipient ~~[is not required to participate in the child support review and]~~ may be represented by legal counsel during the review process or at a court hearing;
- (3) inform the recipient that the recipient may refuse to participate or cease participation in the child support review process, but that the refusal by the recipient to participate will not prevent the completion of the process or the filing of a child support review order ~~[during any stage of the review but that the review will continue to completion and that afterward the recipient may request a court hearing]~~;
- (4) include an affidavit of financial resources; and
- (5) include a request that the recipient designate, on a form provided by the child support agency, an address for mailing any additional notice to the recipient.

(b) In addition to the information required by Subsection (a), the notice of child support review must inform the recipient that:

- (1) the information requested on the form must be returned to the child support agency not later than the 15th day after the date the notice is received or delivered; and

(2) if the requested information is not returned as required, the child support agency:

- (A) may proceed with the review using the information that is available to the agency; and

(B) may file a legal action without further notice to the recipient, except as otherwise required by law.

Sec. 231.407. NOTICE BY MAIL. (a) A notice required in an administrative action under this subchapter must be delivered or served by first class mail or certified mail on each party entitled to citation or notice as provided by Chapter 102.

(b) ~~If notice is served by mail, three days must be added to the time in which the person is required to respond.~~

~~[(c)]~~ This section does not apply to notice required on filing of a child support review order or to later judicial actions.

Sec. 231.408. ADMINISTRATIVE SUBPOENA IN CHILD SUPPORT REVIEW. (a) In a child support review under this subchapter, a child support agency may issue an administrative subpoena to ~~a parent, a person presumed or alleged to be the father of a child for whom support is requested, or~~ any individual or organization believed to have information on the financial resources of the parent or presumed or alleged father.

(b) A court may compel compliance with an administrative subpoena and award attorney's fees and costs to a child support agency enforcing an administrative subpoena on proof that an individual or organization failed to comply with the subpoena without good cause.

Sec. 231.409. SCHEDULING AND CONDUCTING NEGOTIATION CONFERENCE. (a) The child support agency may schedule a negotiation conference without a request from a party.

(b) The child support agency shall schedule a negotiation conference on the timely request of a party ~~[person who completes and returns an affidavit of financial resources]~~.

(c) A negotiation conference, or any part of a negotiation conference, may be conducted by telephone conference call or by video conference as well as in person. The negotiation conference may be adjourned for a reasonable time to permit mediation of issues that cannot be resolved by the parties and the child support agency.

Sec. 231.410. TIME FOR NEGOTIATION CONFERENCE; NOTICE REQUIRED. ~~[(a)] A child support review or negotiation conference under this subchapter shall be conducted not later than the 45th day after the date all notices of child support review have been sent to the parties to the action.~~

~~[(b)]~~ All parties entitled to notice of the negotiation conference shall be notified of the date, time, and place of the negotiation conference not later than the 10th day before the date of the negotiation conference.

Sec. 231.411. RESCHEDULING NEGOTIATION CONFERENCE; NOTICE REQUIRED. A negotiation conference may be rescheduled or adjourned on the request of any party at the discretion of the child support review officer. All parties must be given notice of the rescheduling not later than the third day before the date of the rescheduled negotiation conference.

Sec. 231.412. INFORMATION REQUIRED TO BE PROVIDED AT NEGOTIATION CONFERENCE. At the beginning of the negotiation conference, the child support review officer shall review with the ~~[inform~~

~~all~~ parties participating in the conference information provided in the notice of child support review and inform the parties [in attendance] that:

(1) the purpose of the negotiation conference is to provide an opportunity [attempt] to reach an agreement on a [regarding] child support order [payments];

(2) ~~[a party does not have to participate in the negotiation conference and may request a court hearing;~~

~~[(3) a party may be represented by an attorney chosen by the party;~~

~~[(4) the parties may stop participating in the negotiation conference at any time but that the child support review will continue until completed, and, if a child support review order is issued, a party may request a court hearing;~~

~~[(5) if the parties reach an agreement, the review officer will prepare an agreed review order [for the parties' signatures];~~

(3) ~~[(6)]~~ a party does not have to sign a review order prepared by the child support review officer; and

(4) ~~[(7) even though]~~ a party ~~[signs an agreed review order, the party]~~ may request a court hearing at any time before the 20th day after the date a petition for confirmation of the order is filed [child support review order is confirmed by a court].

Sec. 231.413. DETERMINING SUPPORT AMOUNT; MODIFICATION. (a) A child support agency may use any information obtained by the agency from the parties or any other source and shall apply the child support guidelines provided by this code to determine the appropriate amount of child support.

(b) If the child support agency determines that the support amount in an existing child support order is not in substantial compliance with the guidelines, the child support agency shall issue an appropriate child support review order, including a review order that has the effect of modifying an existing order for child support without the necessity of filing a motion to modify.

Sec. 231.414. RECORD NOT REQUIRED. (a) For the purposes of this subchapter, documentary evidence relied on by the child support review officer, including an [written] affidavit of a party, together with [the written findings, and] the child support review order is [from a negotiation conference are] a sufficient record of the proceedings.

(b) A child support agency is not required to make any other record or transcript of the negotiation conference.

Sec. 231.415. ISSUANCE OF CHILD SUPPORT REVIEW ORDER OR FINDING THAT NO ORDER SHOULD BE ISSUED; EFFECT. (a) If the negotiation conference does not result in agreement by all parties to the [an agreed] child support review order, the review officer shall promptly issue and sign a final decision in the form of a child support review order[;] or a determination that a child support review order should not be issued, not later than the fifth day after the date of the negotiation conference.

(b) ~~If [On the day that a child support review order is issued or]~~ a determination is made that a child support order will not be issued, each

party to a child support review proceeding shall be furnished immediately by hand delivery or by mail ~~[a copy of the order or]~~ notice of the determination.

Sec. 231.416. VACATING CHILD SUPPORT REVIEW ORDER. (a) The review officer may vacate a child support review order on the officer's own motion at any time before the order is filed with the court.

(b) A new negotiation conference, with notice to all parties, may ~~[shall]~~ be scheduled or the officer may make a determination that a child support review order should not be issued and give notice of that determination as provided by this subchapter ~~[to take place not later than the 10th day after the date the child support review order was vacated].~~

Sec. 231.417. CONTENTS OF CHILD SUPPORT REVIEW ORDER.

(a) An agreed child support review order must contain all provisions that are appropriate for an order under this title.

(b) A child support review order that is not agreed to must include child support and medical support provisions, including a determination of arrearages or retroactive support.

(c) A child support review order providing for the enforcement of an order may not contain a provision that imposes incarceration or a fine or contains a finding of contempt.

(d) A child support review order that establishes or modifies an amount of previously ordered support must include the findings required by Section 154.130.

(e) A child support review order that is not agreed to by all the parties may specify and reserve for the court at the confirmation hearing unresolved issues relating to conservatorship or possession of a child.

Sec. 231.418. ADDITIONAL CONTENTS OF AGREED CHILD SUPPORT REVIEW ORDER. If a negotiation conference results in an agreement ~~[by all parties]~~, the [a] child support review order must be signed by each party who agrees to the order, must contain the provisions required by Section 231.417, [all parties to the action] and, as to each party in agreement with the order, must contain:

(1) a waiver by the [each] party of the right to service ~~[and]~~ of process, [the right to] a court hearing and the making of a record on the petition for confirmation;

(2) the mailing address of the [each] party; and

(3) the following statement printed on the order in boldface or in all capital letters:

"I KNOW THAT I DO NOT HAVE TO SIGN THIS ~~[AGREED]~~ CHILD SUPPORT REVIEW ORDER. I KNOW THAT I HAVE A RIGHT TO BE PERSONALLY SERVED WITH THE PETITION FOR CONFIRMATION OF THIS ORDER ~~[HAVE A COURT HEAR EVIDENCE AND MAKE A DECISION IN THIS MATTER]~~. I KNOW THAT I HAVE A RIGHT TO CHANGE MY MIND AND WITHDRAW MY AGREEMENT TO THE TERMS OF THIS ORDER AND REQUEST THAT A COURT DECIDE THIS MATTER BY FILING A REQUEST FOR COURT HEARING AT ANY TIME BEFORE THE 20TH DAY AFTER THE DATE THE PETITION FOR

CONFIRMATION OF THE ORDER IS FILED WITH THE CLERK OF THE COURT. I KNOW THAT IF I FAIL TO FILE A REQUEST FOR A COURT HEARING A COURT MAY CONFIRM AND APPROVE THIS ORDER WITHOUT A HEARING, AND THE ORDER WILL BECOME A VALID COURT ORDER. I KNOW THAT IF I DO NOT OBEY THE TERMS OF THIS ORDER I MAY BE HELD IN CONTEMPT OF COURT."

Sec. 231.419. FILING OF PETITION FOR CONFIRMATION. (a) The child support agency shall file a petition for confirmation with the clerk of the court having continuing jurisdiction of the child who is the subject of the order.

(b) If there is not a court of continuing jurisdiction, the child support agency shall file the petition for confirmation with the clerk of a court having jurisdiction under this title.

Sec. 231.420. CONTENTS OF PETITION FOR CONFIRMATION; DOCUMENTARY EVIDENCE TO BE FILED WITH PETITION. (a) A petition for confirmation shall must include the final child support review order as an attachment to the petition.

(b) Documentary evidence relied on by the child support agency, including, if applicable, a [verified written report of a paternity testing expert concerning the results of paternity testing conducted in the case or a] statement of paternity or a written report of a parentage testing expert, shall be filed with the clerk as exhibits to the petition, but are not required to be served on the parties. The petition must identify the exhibits that are filed with the clerk.

Sec. 231.421. DUTIES OF CLERK OF COURT. (a) On the filing of a petition for confirmation, the clerk of court shall endorse on the petition the date and time that the petition is filed ~~[and sign the endorsement]~~.

(b) If the petition is for an original action, the clerk shall endorse the appropriate court and cause number on the petition.

(c) If the petition is to confirm an agreed child support review order under this subchapter, the child support agency [clerk] shall mail to each party that agreed to the order, at the address shown on the order, a copy of the petition with [and written notice of the filing of the petition that states] the court, filing date, and cause number of the case. The clerk shall note on the docket that the notice was mailed. The child support agency shall file a certificate of service showing the date of the mailing to each party.

(d) ~~The [If the petition is to confirm an order other than an agreed order, the]~~ clerk shall issue service of citation, including a copy of the petition and the child support review order, to each party entitled to service who has not waived service.

(e) A clerk of a district court is entitled to collect in a child support review case the fees authorized in a Title IV-D case by this chapter [a fee for:

~~[(1) the filing of a petition under this section as provided by Section 51.317(b)(1), Government Code;~~

~~[(2) the issuance of notice or process as provided by Section 51.317(b)(4), Government Code, and~~

~~[(3) service of notice or citation as provided by Section 51.319(4), Government Code, or as otherwise provided by law].~~

Sec. 231.422. FORM TO REQUEST A COURT HEARING. (a) A court shall consider any responsive pleading that is intended as an objection to confirmation of a child support review order, including a general denial, as a request for a court hearing.

(b) The [A] child support agency shall:

~~(1) [attach a copy of a form to request a court hearing to each party's copy of the petition for confirmation of a child support review order;~~

~~[(2)] make available to each clerk of court copies of the form to request a court hearing; and~~

~~(2) [(3)] provide the form to request a court hearing to a party to the child support review proceeding on request.~~

(c) The clerk shall furnish the form to a party to a proceeding under this subchapter on the request of the party.

Sec. 231.423. TIME TO REQUEST A COURT HEARING~~[- HEARING SUA SPONTE]~~. ~~[(a)] A party may file a request for a court hearing not later than the 20th day after the date the petition for confirmation of a child support review order is served or mailed as provided by this subchapter [an agreed administrative order is filed or not later than the Monday following the 20th day after the date the party received service of citation in a case involving the confirmation of any other type of order].~~

~~[(b) If the court finds that confirmation of a child support review order without a hearing would not be in the best interests of a child who is the subject of the order, the court may schedule a hearing. The order setting the hearing on the confirmation of the order shall state the court's specific reasons for conducting the hearing.]~~

Sec. 231.424. CONFIRMATION WITHOUT HEARING. Not later than the 30th day after the date a petition for confirmation that includes waivers by all parties is filed or after the date of service is made on the last party required to be served for a petition for confirmation that does not include waivers, whichever is later, the court shall confirm the child support review order by signing an order of confirmation unless a party has filed a timely request for hearing or the court has scheduled a hearing.

Sec. 231.425. EFFECT OF REQUEST FOR HEARING; PLEADING. (a) A request for hearing or an order setting a hearing on confirmation stays confirmation of the order pending the hearing.

(b) At a hearing on confirmation, all issues in the child support review order shall be heard in a trial de novo.

(c) The petition for confirmation and the child support review order constitute a sufficient pleading by the child support agency for relief on any issue addressed in the petition and order.

(d) The request for hearing may limit the scope of the de novo hearing by specifying the issues that are in dispute.

Sec. 231.426. TIME FOR COURT HEARING. A court shall hold a hearing on the confirmation of a child support review order not later than the 30th day after the date the ~~[court determines that a hearing should be held or the]~~ last party to be served files a timely request for a court hearing.

Sec. 231.427. ORDER AFTER HEARING; EFFECT OF CONFIRMATION ORDER. (a) After the hearing on the confirmation of a child support review order, the court shall:

(1) if the court finds that the order should be confirmed, immediately sign a confirmation order and enter the order as an order of the court;

(2) if the court finds that the relief granted in the child support review order is inappropriate, sign an appropriate order at the conclusion of the hearing or as soon after the conclusion of the hearing as is practical and enter the order as an order of the court; or

(3) if the court finds that all relief should be denied, enter an order that denies relief and includes specific findings explaining the reasons that relief is denied.

(b) On the signing of a confirmation order by the judge of the court, the child support review order becomes a final order ~~[judgment]~~ of the court.

Sec. 231.428. SPECIAL CHILD SUPPORT REVIEW PROCEDURES RELATING TO ESTABLISHMENT OF PARENTAGE ~~[PATERNITY]~~. (a) If the parentage ~~[paternity]~~ of a child has not been established ~~[by court order]~~, the notice of child support review served on the parties must include an allegation that the recipient ~~[alleged father]~~ is a ~~[the]~~ biological parent ~~[father]~~ of the child. The notice shall inform the parties that the alleged father of the child may sign a statement of paternity and that any party may request that scientifically accepted parentage ~~[paternity]~~ testing be conducted to assist in determining the identities of ~~[whether the alleged father is]~~ the child's parents ~~[father]~~.

(b) A negotiation conference shall be conducted to resolve any issues of support in an action in which all parties agree as to ~~[that the alleged father is]~~ the child's parentage ~~[biological father]~~.

(c) If a party denies parentage ~~[that the alleged father is the child's biological father or, in the case of a presumed father, if either party files a verified denial of paternity]~~, the child support agency may schedule parentage ~~[paternity]~~ testing. If either party fails or refuses to participate in administrative parentage testing, the child support agency may file a child support review order with a request for court-ordered parentage testing. The court shall follow the procedures and may impose the sanctions provided by this code to obtain compliance with the parentage testing order. The court shall confirm the child support review order as a temporary or final order of the court only after an opportunity for parentage testing has been provided.

(d) If parentage ~~[paternity]~~ testing does not exclude the alleged parent ~~and~~ ~~[father from being the child's father and a party continues to deny that the alleged father is the child's biological father, the child support agency~~

~~may schedule a negotiation conference as provided by this subchapter. If~~ the results of a verified written report of a parentage ~~[paternity]~~ testing expert meet the requirements of Chapter 160 for issuing a temporary order, the child support agency may issue a child support review order.

(e) If the results of parentage ~~[paternity]~~ testing exclude an ~~[the]~~ alleged parent ~~[or presumed father]~~ from being the biological parent ~~[father]~~ of the child, the child support agency shall issue a child support review order that declares that the excluded person ~~[alleged or presumed father]~~ is not a parent ~~[the father]~~ of the child.

(f) Any party may file a petition for confirmation of a child support review order issued under this section.

Sec. 231.429. ADMINISTRATIVE PROCEDURE LAW NOT APPLICABLE. The child support review process under this chapter is not governed by the administrative procedure law, Chapter 2001, Government Code.

Sec. 231.430. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 1997.

Sec. 231.431. STUDY OF CHILD SUPPORT REVIEW PROCESS. The attorney general as the Title IV-D agency shall conduct a study to determine and compare the cost of child support enforcement through use of the child support review process authorized by this subchapter and the cost of child support enforcement by the attorney general through use of other enforcement mechanisms available under this chapter. The attorney general shall report the results of this study to the governor and the legislature not later than September 1, 1996, and shall include in the report recommendations regarding statutory amendments for improving judicial and administrative processes for child support enforcement. This section expires September 2, 1996.

SECTION 2.05. Section 71.035(a), Government Code, is amended to read as follows:

(a) The council shall gather judicial statistics and other pertinent information from the several state judges and other court officials of this state. In addition, the council shall implement a monthly tracking system to ensure accountability for counties and courts which participate in the statewide integrated system for child support and medical support enforcement established under Section 231.0011, Family Code. As a duty of office, the district clerks and county clerks serving the affected courts shall report monthly such information as may be required by the council, including, at a minimum, the time required to enforce cases from date of delinquency, from date of filing, and from date of service until date of disposition. Such information as is necessary to complete the report and not directly within the control of the district or county clerk, such as date of delinquency, shall be provided to the clerk by the child support registry or by the enforcement agency providing Title IV-D enforcement services in the court. The monthly report shall be transmitted to the Office of Court Administration no later than the 20th day of the month following the month reported, in such form as may be prescribed by the Office of Court



Administration, which may include electronic data transfer. Copies of such reports shall be maintained in the office of the appropriate district or county clerk for a period of at least two years, and shall be available to the public for inspection and reproduction.

ARTICLE 3. INTERAGENCY COOPERATION AND STUDIES

SECTION 3.01. MONITORING IMPLEMENTATION OF THE STATEWIDE INTEGRATED SYSTEM FOR CHILD SUPPORT ENFORCEMENT. (a) The attorney general shall establish a work group to monitor the progress toward implementation of the integrated statewide system established by Section 1.01 of this Bill, and determine the effect of that effort as it relates to:

(1) maximizing federal assistance for county-based child support collection efforts;

(2) replacing the existing state child support enforcement application system with an automatic enforcement system that does not require an applicant to file a complaint.

(b) The work group established by this Act shall report its findings and recommendations to the attorney general and shall notify the governor, the comptroller and the legislature of the filing of the report not later than September 1, 1996 and annually thereafter.

SECTION 3.02. AGREEMENT FOR CASH INCENTIVES FOR MEDICAL ASSISTANCE. (a) The attorney general as the Title IV-D agency and the Texas Department of Health shall negotiate an agreement regarding the payment by the department of a cash incentive to the agency for each child eligible for medical assistance under the state Medicaid program that the agency causes to be enrolled in a private health insurance plan, and for payment of a portion of the state share of costs recovered or saved as a result of the efforts of the agency.

(b) The attorney general and the Texas Department of Health shall report to the legislature the results of negotiations conducted under this section not later than October 1, 1996.

SECTION 3.03. STUDY ON MEDICAL SUPPORT. (a) The attorney general, the state medicaid administrator and the Insurance Commission shall initiate a study regarding establishment of a health insurance purchasing alliance to purchase insurance coverage for children for whom a child support obligation is established or enforced under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.).

(b) Not later than October 1, 1996, the attorney general, the state medicaid administrator and the Insurance Commission shall prepare and file a report summarizing the results of the study required by this section and shall give notice of filing the report to the:

- (1) governor;
- (2) lieutenant governor;
- (3) speaker of the house of representatives;
- (4) attorney general; and
- (5) commissioner of health and human services.

SECTION 3.04. USE OF PRIVATE ENTITIES TO ASSIST IN CHILD SUPPORT ENFORCEMENT. (a) The Office of the Attorney General is

strongly encouraged to expand the cost-effective use of private contractors to perform Title IV-D program functions.

(b) The Office of the Attorney General shall, not later than July 1, 1996, perform a cost analysis such as that used by the Council on Competitive Government, for a standardized comparison of similar activities performed by private firms and the Office of the Attorney General. If Office of the Attorney General costs for identified activities of the Title IV-D agency are higher than the private contractors' and the contractor could deliver services as effectively as the Title IV-D agency, the agency may consider a contractor to perform the activities. This section does not limit the authority of the Title IV-D agency to contract for services.

(c) The attorney general shall coordinate with the Council on Competitive Government, and may employ private consultants to develop the methodology and evaluate the activities being considered for privatization.

(d) The attorney general shall report the results of the efforts made under this section, and notify the governor, the comptroller and the legislature of the filing of the report not later than December 1, 1996.

#### ARTICLE 4. HEALTH INSURANCE

SECTION 4.01. Chapter 3, Insurance Code, is amended by adding Subchapter J to read as follows:

##### SUBCHAPTER J. MEDICAL CHILD SUPPORT

Art. 3.96-1. DEFINITIONS. In this subchapter:

(1) "Child" has the meaning assigned by Section 101.003(a) and (b), Family Code.

(2) "Child support agency" has the meaning assigned by Section 101.004, Family Code.

(3) "Custodial parent" means:

(A) a managing conservator of a child or a possessory conservator of a child who is a parent of the child; or

(B) a guardian of the person of a child, or another custodian of a child if the guardian or custodian is designated by a court or administrative agency of this or another state.

(4) "Health insurer" means any insurance company, group hospital service corporation, or health maintenance organization that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness.

(5) "Insurer" means:

(A) a health insurer;

(B) a governmental entity subject to:

(i) Article 3.51-1, 3.51-2, 3.51-4, 3.51-5, or 3.51-5A of this code; or

(ii) Section 1, Chapter 123, Acts of the 60th Legislature, Regular Session, 1967 (Article 3.51-3, Vernon's Texas Insurance Code);

(C) a multiple employer welfare arrangement, as that term is defined by Article 3.95-1 of this code; or

(D) a group health plan, as defined by Section 607(1), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1167).

(6) "Medical assistance" means medical assistance under the state Medicaid program.

Art. 3.96-2. DENIAL OF ENROLLMENT PROHIBITED. An insurer may not deny enrollment of a child under the health insurance coverage of the child's parent on the ground that the child:

(1) has a preexisting condition;

(2) was born out of wedlock;

(3) is not claimed as a dependent on the parent's federal income tax return;

(4) does not reside with the parent or in the insurer's service area; or

(5) is or has been an applicant for or recipient of medical assistance.

Art. 3.96-3. ENROLLMENT REQUIRED. (a) If a parent eligible for dependent health coverage through an insurer is required by a court or administrative order to provide health coverage for a child, the insurer shall permit the parent to enroll the child without regard to any enrollment period restriction.

(b) If a parent eligible for dependent health coverage through an insurer is required by a court or administrative order to provide health coverage for a child and fails to apply to obtain the health insurance coverage for the child, the insurer shall enroll the child on application of a custodial parent of the child, a child support agency having a duty to collect or enforce support for the child, or the child.

Art. 3.96-4. CANCELLATION OR NONRENEWAL PROHIBITED. (a) An insurer may not cancel or refuse to renew insurance coverage of a child entitled to enrollment or enrolled under this subchapter unless satisfactory written evidence is filed with the insurer that shows that:

(1) the court order or administrative order that required the coverage is no longer in effect; or

(2) the child is enrolled in comparable health insurance coverage or will be enrolled in comparable coverage that will take effect not later than the effective date of the cancellation or nonrenewal.

(b) As used in this section, "a child entitled to enrollment or enrolled under this subchapter" does not include a child as to whom eligibility has terminated because the parent eligible for dependent health coverage is no longer eligible for such coverage.

Art. 3.96-5. NOTICE OF AVAILABILITY OF CONTINUATION OR CONVERSION COVERAGE. If dependent health coverage being terminated pursuant to Art. 3.96-4(b) contains provisions for the continuation or conversion of such coverage for the child, the insurer shall notify the custodial parent and the child support agency of the costs and other requirements for extending or converting such coverage, and shall

enroll or continue enrollment of the child on application of a parent of the child, a child support agency or the child.

Art. 3.96-6. EFFECT OF ASSIGNMENT OF MEDICAL SUPPORT RIGHTS TO STATE AGENCY; INFORMATION. (a) An insurer may not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance and covered for health benefits from the insurer that are different from the requirements applicable to an agent or assignee of any other covered individual.

(b) An insurer shall provide to a state agency providing medical assistance, or to a child support agency enforcing medical support, information as necessary to facilitate reimbursement of medical services provided to or paid on behalf of a child.

Art. 3.96-7. RIGHTS OF CUSTODIAL PARENT AND ADULT CHILD. (a) If a child receives health insurance coverage through the insurer of a parent of the child, that insurer must provide information and documents to each custodial parent or an adult child as necessary for the child to obtain benefits through that coverage, including:

- (1) the name of the insurer;
- (2) the number of the policy;
- (3) a copy of the policy and schedule of benefits;
- (4) a health insurance membership card;
- (5) claim forms; and
- (6) any other information or document necessary to submit a claim

in accordance with the insurer's policies and procedures.

(b) The insurer shall permit a custodial parent, a health care provider, adult child, or a state agency that has been assigned medical support rights to submit claims for covered services without the approval of the insured parent.

(c) The insurer shall make payments on covered claims submitted in accordance with this article directly to the custodial parent, health care provider, adult child, or state agency making the claim.

Art. 3.96-8. SERVICE AREA RESTRICTIONS PROHIBITED. An insurer may not enforce otherwise applicable provisions that would deny, limit, or reduce payment for claims for a covered child who lives outside the insurer's coverage territory but inside the United States.

Art. 3.96-9. PENALTIES; REMEDIES. An insurer that violates this subchapter is subject to the same penalties, and an injured party has the same rights and remedies, as those provided by Section 16, Article 21.21, of this code.

Art. 3.96-10. RULES. The commissioner shall adopt reasonable rules as necessary to implement this subchapter and the requirements of 42 U.S.C. Section 1396a(a)(60), including rules defining acts that constitute unfair or deceptive practices under Section 13, Article 21.21, of this code.

SECTION 4.02. Section 101.012, Family Code, is amended to read as follows:

Sec. 101.012. EMPLOYER. "Employer" means a person, corporation, partnership, workers' compensation insurance carrier, governmental entity,

and the United States, and includes, for purposes of enrolling dependents in a group health insurance plan, a union, trade association, or other similar organization.

SECTION 4.03. Section 154.184, Family Code, is amended to read as follows:

Sec. 154.184. EFFECT OF ORDER. (a) ~~Receipt of [For purposes of enrolling a child in a health insurance program under this subchapter,]~~ a medical support order requiring that health insurance be provided for a child shall be considered a change in the family circumstances of the employee or member, for health insurance purposes, [covered person] equivalent to the birth or adoption of a child ~~[by the covered person].~~

(b) ~~[On receipt of the order by the employer, the]~~ The child shall be automatically enrolled for the first 31 days after the receipt of the order by the employer on the same terms and conditions as apply to any other ~~[a]~~ dependent child.

(c) ~~[On receipt of the order by the employer, t]~~ The employer shall notify the insurer of the automatic enrollment.

(d) During the 31-day period, the employer and insurer shall complete all necessary forms and procedures to make the enrollment permanent, or shall report in accordance with this subchapter the reasons the coverage cannot be made permanent [policyholder shall apply for coverage for the child in accordance with the medical support order].

SECTION 4.04. Section 154.186, Family Code, is amended to read as follows:

Sec. 154.186. NOTICE TO EMPLOYER. The obligee, obligor, or a child support agency ~~[local domestic relations office, or Title IV-D agency]~~ may send a ~~[certified]~~ copy of the order requiring an employee to provide health insurance coverage for a ~~[the]~~ child to the employer ~~[by certified mail, return receipt requested. The order is binding on the employer on receipt].~~

SECTION 4.05 Section 154.187, Family Code, is amended by amending Subsections (a) and (c), and by adding new Subsection (g) to read as follows:

(a) An order to an employer directing that health insurance coverage be provided to a child of an employee or member is binding on the employer on receipt. If the employee or member is eligible for dependent health coverage for the child, the [On receipt of an order directing that health insurance coverage be extended to a child of an employee, an] employer shall immediately enroll the child in a health insurance plan ~~[available to the employee. If the employer is not able to immediately enroll the child, the employer shall enroll the child at the next available enrollment period as a dependent of the employee].~~ If dependent coverage is not available to the employee or member through the employer's health insurance plan, or the employer [is responsible for providing notice of this fact but] is not responsible or otherwise liable for providing such coverage, but shall provide notice to the sender in accordance with subsection (c) of this section.

(c) An employer who has received an order under this subchapter shall provide to the sender, by first class mail not later than the 30th day after the date the employer receives the order, a statement that the child:

- (1) has been enrolled in a health insurance plan; or
- (2) ~~[will be enrolled in a health insurance plan at the next available enrollment period and provide the expected date of such enrollment; or~~

~~[(3)] cannot be enrolled in a health insurance plan and provide the reason why coverage cannot be provided.~~

~~(g) An employer who fails to enroll a child, fails to withhold or remit premiums or cash medical support, or discriminates in hiring or employment on the basis of a medical support order shall be subject to the penalties and fines in Subchapter C, Chapter 158.~~

SECTION 4.06. Section 154.192, Family Code, is amended to read as follows:

Sec. 154.192. ~~[HEALTH MAINTENANCE ORGANIZATION. This subchapter does not require a health maintenance organization to provide coverage to a child who resides outside the geographic service area].~~ CANCELLATION OR ELIMINATION OF INSURANCE COVERAGE FOR CHILD. (a) Unless the employee or member ceases to be eligible for dependent coverage, or the employer has eliminated dependent health coverage for all of the employer's employees or members, the employer may not cancel or eliminate coverage of a child enrolled under this subchapter until the employer is provided satisfactory written evidence that:

(1) the court order or administrative order requiring the coverage is no longer in effect; or

(2) the child is enrolled in comparable health insurance coverage or will be enrolled in comparable coverage that will take effect not later than the effective date of the cancellation or elimination of the employer's coverage.

SECTION 4.07. Section 158.206(a), Family Code, is amended to read as follows:

(a) An employer receiving an order or writ of withholding, including an order directing that health insurance be provided to a child, who complies with the order or writ is not liable to the obligor for the amount of income withheld and paid as provided in the order or writ.

#### ARTICLE 5. EFFECTIVE DATE AND TRANSITION PROVISIONS; EMERGENCY

SECTION 5.01. (a) This Act takes effect September 1, 1995.

(b) Subchapter J, Chapter 3, Insurance Code, as added by Section 4.01 of this Act applies only to an insurance policy or evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 1996. A policy or evidence of coverage that is delivered, issued for delivery, or renewed before January 1, 1996, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) The Office of the Attorney General may exercise the contracting authority granted in Section 231.0011, Family Code, as added by Section 1.01 of this Act to provide for a phased implementation of the statewide system, and shall implement the system to the extent that locally generated funds and federal reimbursement related to such funds are sufficient to pay for implementation.

(d) The Office of Court Administration of the Texas Judicial System may phase in the monthly report required by Section 71.035, Government Code, as amended by Section 2.05 of this Act to correspond with the phased implementation of the statewide integrated system for child support enforcement described in Section 231.0011, Family Code, as added by Section 1.01 of this Act.

(e) If before implementing any provision of this Act, the attorney general, the Texas Department of Health, the Texas Department of Human Services, or another affected agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the affected agency shall promptly apply for a waiver, and the provision shall take effect when necessary waivers have been granted. A copy of each waiver request shall be provided to the governor, the lieutenant governor and the speaker of the house of representatives.

(f) For the purpose of implementing the integrated system established by Section 231.0011, Family Code, as added by Section 1.01 and Section 71.035, Government Code, as amended by Section 2.05 of this Act, all funds received from the federal government as reimbursement for expenses directly related to the integrated system, including the federal match for locally generated funds, shall be in excess of any amount appropriated to the attorney general by other Acts of the 74th Legislature, and are hereby appropriated to the attorney general for the fiscal years ending August 31, 1996 and August 31, 1997.

SECTION 5.02. Not later than December 1, 1996, the attorney general shall report to the legislature an estimate of the cost savings to the state and effectiveness of the expansion of child support enforcement services and of privatization efforts.

SECTION 5.03. (a) The office of the attorney general, in conjunction with the Texas Department of Human Services, shall develop and implement a plan to assign a representative to work with department eligibility workers in department offices or facilities that are located in the same geographic region as offices or facilities of the attorney general. The plan shall:

(1) include a schedule for implementation; and

(2) provide that the office of the attorney general may make a work assignment under this subsection only if the anticipated increased collection of child support for public assistance cases is greater than the cost of placing the representative in a department office or facility.

(b) Not later than October 1, 1995, the attorney general shall complete the plan required by this section and send notice of filing the completed plan to the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) The attorney general and the Texas Department of Human Services shall prepare the initial memorandum of understanding required by Section 1.07 of Act, not later than December 1, 1995.

SECTION 5.04. The change in law made to Subchapter E, Chapter 231, Family Code, as amended by this Act, applies only to a child support review for which notice is given on or after the effective date of this Act. A child support review for which notice is given before that date is governed by the law in effect at the time notice was given, and the former law is continued in effect for that purpose.

SECTION 5.05. (a) Section 3.01 of this Act expires on September 2, 1997.

(b) Subsection (b) of Section 3.02, and 3.03 of this Act expire January 1, 1997.

SECTION 5.06. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### Floor Amendment No. 1

Amend C.S.S.B. 793 as follows:

In SECTION 5.01(d), add at the end of the subsection a new sentence to read as follows:

The Office of Court Administration shall cooperate with the implementation workgroup established by this Act to consolidate the new report with existing required reports in order to minimize duplicate data entry, and shall not require the report under this Act until sufficient automation is in place to prevent manual reporting by the responsible clerks.

#### Floor Amendment No. 2

Amend C.S.S.B. 793 as follows:

In SECTION 1.01, which adds new Sec. 231.0011, Family Code, add at the end of the section a new subsection (l) to read as follows:

(l) Participation in the statewide integrated system for child support and medical support enforcement by a county is voluntary, and nothing in this section shall be construed to mandate participation.

In SECTION 1.06, amending Sec. 231.304, Family Code, strike "Section 14.061, Family Code" in the last line of new subsection (j), and substitute "Subchapter D, Chapter 154".

#### Floor Amendment No. 3

Amend C.S.S.B. 793 as follows:

In ARTICLE 3, (beginning on page 20, line 12) add new SECTION 3.05 to read as follows:

SECTION 3.05. CHILD SUPPORT COLLECTION PRIVATIZATION COUNCIL.

(a) To assist counties implementing the integrated system of child support and medical support enforcement established by Section 1.01 of



this Act, the attorney general shall convene a Child Support Privatization Council, which shall include representatives of state and county officials, including fiscal officers.

(b) The council shall assist the attorney general, subject to federal approval, in implementing the provisions of this Act by helping to:

(1) develop criteria and standards for the selection of private collectors of child support to provide services under subcontract with the participating counties;

(2) develop and provide for use by the counties a model request for proposal for the selection of private child support collectors, which shall take into account the funding and cost-effectiveness of the program;

(3) establish guidelines and suggest minimum qualifications of private collectors, which shall include a recommendation that private collectors performing legal work should be attorneys licensed to practice in this state with not less than five years of experience in suits affecting parent child relationship.

(4) suggest procedures and models, consistent with federal requirements for the Title IV-D program, for the effective participation of private child support collectors in the unified enforcement system; and,

(5) engage in other activities necessary to encourage the cost-effective utilization of private collectors in the integrated system established by this Act.

#### **Floor Amendment No. 4**

Amend C.S.S.B. 793 (House committee report) as follows:

(1) On page 4, between lines 3 and 4, insert the following appropriately numbered Sections:

SECTION . Sec. 231.114. REPORTS OF CHILD SUPPORT PAYMENTS TO CONSUMER REPORTING AGENCIES. (a) The Title IV-D agency shall make information available in accordance with this section to a consumer reporting agency regarding the amount of child support owed and the amount paid by an obligor in a Title IV-D case.

(b) Before disclosing the information to consumer reporting agencies, the Title IV-D agency shall send the obligor a notice by mail to the obligor's last known address. The notice must include:

(1) the information to be released, including the amount of the obligor's child support obligation and delinquency, if any, that will be reported;

(2) the procedure available for the obligor to contest the accuracy of the information; and

(3) a statement that the information will be released if the obligor fails to contest the disclosure before the 30th day after the date of mailing of the notice.

(c) If the obligor does not contest the disclosure within the period specified by Subsection (b), the Title IV-D agency shall make the information available to the consumer reporting agency.

(d) The Title IV-D agency shall regularly update the information released to a consumer reporting agency under this section to ensure the accuracy of the released information.

(e) The Title IV-D agency may charge a consumer reporting agency a reasonable fee for making information available under this section, including all applicable mailing costs.

(f) In this section:

(1) "Consumer reporting agency" means any person that regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for monetary fees, for dues, or on a cooperative nonprofit basis, to furnish consumer reports to third parties.

(2) "Obligor" means any person required to make payments under the terms of a support order for a child.

(3) "Title IV-D case" means a case in which services are being provided by the Title IV-D agency under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) seeking to locate an absent parent, determine parentage, or establish, modify, enforce, or monitor a child support obligation.

SECTION . Section 231.108(c), Family Code, is amended to read as follows:

(c) The Title IV-D agency may use or release information from the files and records, including information that results from a communication made by a recipient of financial assistance under Chapter 31, Human Resources Code, or by an applicant for or recipient of services under this chapter, for purposes directly connected with the administration of the child support, paternity determination, parent locator, or aid to families with dependent children programs. The Title IV-D agency may release information from the files and records to a consumer reporting agency in accordance with Section 231.113.

(2) Renumber subsequent SECTIONS of the bill accordingly.

#### **Floor Amendment No. 5**

Amend C.S.S.B. 793, on page 20, between lines 11 and 12, insert the following appropriately numbered SECTION:

SECTION . Section 151.0036(b), Tax Code, is amended to read as follows:

(b) "Debt collection service" does not include the collection of:

(1) a judgment by an attorney or by a partnership or professional corporation of attorneys if the attorney, partnership, or corporation represented the person in the suit from which the judgment arose; or

(2) court-ordered child support or medical child support.

(2) Renumber subsequent sections of the bill accordingly.

The amendments were read.

On motion of Senator Harris and by unanimous consent, the Senate concurred in the House amendments to S.B. 793 by a viva voce vote.

#### **HOUSE BILL 2313 RECOMMITTED**

On motion of Senator Ratliff and by unanimous consent, H.B. 2313 was recommitted to the Committee on Education.

**SENATE BILL 626 WITH HOUSE AMENDMENTS**

Senator Armbrister called **S.B. 626** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **S.B. 626** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to certain laws governing water districts and nonprofit water or sewer service corporations; creating penalties; granting authority to issue bonds; granting the power of eminent domain.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

**SECTION 1.** Section 1.002, Water Code, is amended to read as follows:

**Sec. 1.002. CONSTRUCTION OF CODE.** (a) The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

(b) In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

(c) A reference in a law to a statute or part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

**SECTION 2.** Title 4, Water Code, is amended by adding Chapter 49 to read as follows:

**CHAPTER 49. PROVISIONS APPLICABLE TO ALL DISTRICTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 49.001. DEFINITIONS.** (a) As used in this chapter:

(1) "District" means any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Board" means the governing body of a district.

(4) "Executive director" means the executive director of the commission.

(5) "Water supply corporation" means a nonprofit water supply or sewer service corporation created or operating under Chapter 76, Acts of

the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

(6) "Director" means either a supervisor or director appointed or elected to the board.

(7) "Municipal solid waste" has the same meaning assigned by Section 361.003, Health and Safety Code.

(8) "Special water authority" means a river authority as that term is defined in Section 30.003, or a district created by a special Act of the legislature that:

(A) is a provider of water or wastewater service to two or more municipalities; and

(B) is governed by a board of directors appointed or designated in whole or in part by the governor, the Texas Water Development Board, or municipalities within its service area.

(9) "Potable water" means water that has been treated for public drinking water supply purposes.

(b) These definitions are for use in this chapter only, and have no effect on any other statute or code unless specifically referenced by that statute or code.

Sec. 49.002. APPLICABILITY. This chapter applies to all general and special law districts to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code or any Act creating or affecting a special law district. In the event of such conflict, the specific provisions in such other chapter or Act shall control.

Sec. 49.003. PENALTY. A district that fails to comply with the filing provisions of this code may be subject to a civil penalty of up to \$100 per day for each day the district wilfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

Sec. 49.004. PENALTY FOR VIOLATION OF DISTRICT RULES. (a) The board may set reasonable civil penalties for the breach of any rule of the district that shall not exceed the jurisdiction of a justice court as provided by Section 27.031, Government Code.

(b) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(c) If the district prevails in any suit to enforce its rules, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

[Sections 49.005-49.009 reserved for expansion]

#### SUBCHAPTER B. CREATION

Sec. 49.010. ORDER OR ACT CREATING DISTRICT. Within 60 days after the date a district is created, the district shall file with the executive director a certified copy of the order or legislative Act creating the district or authorizing its creation, unless the district was created by order of the commission.

[Sections 49.011-49.050 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 49.051. BOARD OF DIRECTORS. A district shall be governed by its board, the number of which is otherwise provided by law.

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots

or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts defined in Section 49.181(h)(4), or a district where the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

Sec. 49.053. QUORUM. A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district. This section does not apply to special water authorities.

Sec. 49.054. OFFICERS. (a) After a district is created and the directors have qualified, the board shall meet, elect a president, vice-president, secretary, and any other officers or assistant officers as the board may deem necessary, and begin the discharge of its duties.

(b) After each directors election, the board shall meet and elect officers.

(c) The president is the chief executive officer of the district, presides at all meetings of the board, and shall execute all documents on behalf of the district. The vice-president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the district are properly kept and shall attest the president's signature on all documents.

(d) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district.

(e) After any election or appointment of a director, a district shall notify the executive director within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the district for such purpose.

(f) This section does not apply to special water authorities.

Sec. 49.055. SWORN STATEMENT, BOND, AND OATH OF OFFICE.

(a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the constitution for public office.

(b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.

(c) Before beginning to perform the duties of office, each director shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the board and paid for by the district.

(d) The sworn statement, bond, and oath shall be filed with the district and retained in its records. A duplicate original of the sworn statement and the oath shall also be filed with the secretary of state within 10 days after their execution and need not be filed before the new director begins to perform the duties of office.

(e) This section does not apply to special water authorities.

Sec. 49.056. GENERAL MANAGER. (a) The board may employ or contract with a person to perform such services as general manager for the district as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the district subject only to orders of the board.

(b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the district and to determine the compensation to be paid all employees other than the general manager.

(c) Except as provided by Section 49.052, a director may be employed as general manager of the district, but the compensation of a general manager who also serves as a director shall be established by the other directors.

Sec. 49.057. MANAGEMENT OF DISTRICT. (a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.

(b) The board shall adopt an annual budget. All district employees are employed at the will of the district unless the district and employee execute a written employment contract.

(c) The board shall set the compensation and terms for consultants.

(d) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the district shall follow the procedures provided in Subchapter A, Chapter 2254, Government Code (Professional Services Procurement Act).

(e) The board shall require an officer, employee, or consultant who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.

(f) The board may pay the premium on surety bonds required of officials, employees, or consultants of the district out of any available funds of the district, including proceeds from the sale of bonds.

(g) The board may adopt bylaws to govern the affairs of the district to perform its purposes. The board may, by resolution, authorize its general manager or other employee to execute documents on behalf of the district.

(h) The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

Sec. 49.058. CONFLICTS OF INTEREST. A director of a district is subject to the provisions of Chapter 171, Local Government Code, relating to the regulation of conflicts of interest of officers of local governments.

Sec. 49.059. DISQUALIFICATION OF TAX ASSESSOR AND COLLECTOR. (a) No person may serve as tax assessor and collector of a district providing potable water or sewer utility services to household users if that person:

(1) is related within the third degree of affinity or consanguinity to any developer of property in the district, a member of the board, or the manager, engineer, or attorney for the district;

(2) is or was within two years immediately preceding the assumption of assessment and collection duties with the district an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) owns an interest in or is employed by any corporation organized for the purpose of tax assessment and collection services, a substantial portion of the stock of which is owned by a developer of property within the district or any director, manager, engineer, or attorney for the district; or

(4) is directly or through a corporation developing land in the district or is a director, engineer, or attorney for the district.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as tax assessor and collector with a person who would not be disqualified.

(c) Any person who wilfully violates the provisions of Subsection (a) is guilty of a misdemeanor and on conviction shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" has the same meaning as in Section 49.052(d).



Sec. 49.060. FEES OF OFFICE; REIMBURSEMENT. (a) A director is entitled to receive fees of office of not more than \$100 a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$6,000 per annum except for directors of a special water authority which is engaged in the distribution and sale of electric energy to the public.

(b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

(c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the district a verified statement showing the number of days actually spent in the service of the district and a general description of the duties performed for each day of service.

(d) Section 49.002 notwithstanding, in all areas of conflict the provisions of this section shall take precedence over all prior statutory enactments. If the enactment of this section results in an increase in the fees of office for any district, that district's fees of office shall not increase unless the board adopts a resolution authorizing payment of the higher fees.

Sec. 49.061. SEAL. The directors shall adopt a seal for the district.

Sec. 49.062. OFFICES AND MEETING PLACES. (a) The board shall designate from time to time and maintain one or more regular offices for conducting the business of the district and maintaining the records of the district. Such offices may be located either inside or outside the district's boundaries as determined in the discretion of the board.

(b) The board shall designate one or more places inside or outside the district for conducting the meetings of the board. The meeting place may be a private residence or office, provided that the board, in its order establishing the meeting place, declares the same to be a public place and invites the public to attend any meeting of the board. If the board establishes a meeting place or places outside the district, it shall give notice of the location or locations by filing a true copy of the resolution establishing the location or locations of the meeting place or places with the commission and also by publishing notice of the location or locations in a newspaper of general circulation in the district. If the location of any of the meeting places outside the district is changed, notice of the change shall be given in the same manner.

(c) After at least 25 qualified electors are residing in a district, on written request of at least five of those electors, the board shall designate a meeting place and hold meetings within the district if it determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings. On the failure to designate the location of the meeting place within the district, five electors may petition the commission to designate a location. If it determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings, the commission may designate a meeting place inside or outside the district which is reasonably available to the public and require that the meetings be held at such place.

After the next election, the board may designate different meeting places, including one located outside the boundaries of the district.

(d) Two or more districts may designate and share offices and meeting places. This section does not apply to special water authorities.

Sec. 49.063. NOTICE OF MEETINGS. Notice of meetings of the board shall be given as set forth in the open meetings law, Chapter 551, Government Code, except that if a district does not have a meeting place within the district, the district shall post notice of its meeting at a public place within the district specified by the board in a written resolution, rather than at its administrative office. The board shall specify such public place to be a bulletin board or other place within the district which is reasonably available to the public. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

Sec. 49.064. MEETINGS. The board shall hold such regular and special meetings as may be necessary for the proper conduct of the district's business. All meetings shall be conducted in accordance with the open meetings law, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the open meetings law, Chapter 551, Government Code.

Sec. 49.065. RECORDS. (a) The board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.

(b) The records of each district are the property of the district and are subject to the open records law, Chapter 552, Government Code.

(c) The preservation, microfilming, destruction, or other disposition of the records of each district is subject to the requirements of Chapter 201, Local Government Code, and rules adopted thereunder.

Sec. 49.066. SUITS. (a) A district may sue and be sued in the courts of this state in the name of the district by and through its board. All courts shall take judicial notice of the creation of the district and of its boundaries.

(b) Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

(c) The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon the district may be served.

(d) Except as provided in Subsection (e), no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district created under this code;

(2) any bonds or other obligations created under this code; or

(3) the validity or the authorization of a contract with the United States by the district.

(e) The matters listed in Subsection (d) may be judicially inquired into at any time and determined in any suit brought by the State of Texas through the attorney general. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this code or by the Texas Constitution. It is specifically provided, however, that no such proceeding shall affect the validity of or security for any bonds or other obligations theretofore issued by a district if such bonds or other obligations have been approved by the attorney general as provided by Section 49.184.

(f) A district or water supply corporation shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.

Sec. 49.067. CONTRACTS. A district shall contract, and be contracted with, in the name of the district.

Sec. 49.068. CONTRACTS WITH GOVERNMENTAL AGENCIES. The provisions of this chapter pertaining to bids and the Local Government Code notwithstanding, a district may purchase property from any governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

Sec. 49.069. EMPLOYEE BENEFITS. (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and may adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

Sec. 49.070. WORKERS' COMPENSATION. The board may become a subscriber under Title 5, Labor Code (Texas Workers' Compensation Act), with any insurance company authorized to write the policies in the State of Texas.

Sec. 49.071. DISTRICT NAME CHANGE. (a) On petition by a district showing reasonable grounds for a name change, the commission by order may change the name of the district to the name requested by the district. The new name must be generally descriptive of the location of the district followed by the type of district as provided by the title of the chapter of the Water Code governing the district. If a district is located wholly within one county that contains more than one district of that type, the district may be differentiated, if necessary, by adding to the new name the proper consecutive number. The new name may not be the same as the name of any other district in the county.

(b) A name change takes effect on the date of issuance of the commission order making the name change.

(c) Not later than the 30th day after the date of issuance of the commission order making the name change, the district shall publish notice of the name change in a newspaper or newspapers of general circulation in the county or counties in which the district is located. Within that same period, the district shall also give notice of the name change by mail to utility customers or permittees, if any, and, to the extent practicable, to the holders of bonds, obligations, and other indebtedness of the district. Failure of the district to comply with this subsection does not affect the validity of the name change.

(d) A change in the name of a district does not affect bonds, obligations, or other indebtedness of the district existing before the name change occurred.

[Sections 49.072-49.100 reserved for expansion]

#### SUBCHAPTER D. ELECTION PROVISIONS

Sec. 49.101. GENERAL. All elections shall be generally conducted in accordance with the Election Code except as otherwise provided for by this code. Write-in candidacies for any district office shall be governed by Subchapter C, Chapter 146, Election Code.

#### Sec. 49.102. CONFIRMATION AND DIRECTOR ELECTION.

(a) Before issuing any bonds or other obligations, an election shall be held within the boundaries of the proposed district to determine if the proposed district shall be established and, if the directors of the district are required by law to be elected, to elect permanent directors.

(b) Notice of a confirmation or director election shall state the day and place or places for holding the election, the propositions to be voted on, and the number of directors to be voted on.

(c) The ballots for a confirmation election shall be printed to provide for voting "For District" and "Against District." Ballots for a directors election shall provide the names of the persons appointed by the governing body who qualified and are serving as temporary directors at the time the election is called. The ballots shall also have blank places after the names of the temporary directors in which a voter may write the names of other persons for directors.

(d) Immediately after the confirmation and director election, the presiding judge shall take returns of the results to the temporary board. The temporary board shall canvass the returns and declare the results at the earliest practicable time.

(e) If a majority of the votes cast in the election favor the creation of the district, then the temporary board shall declare that the district is created and enter the result in its minutes. If a majority of the votes cast in the election are against the creation of the district, the temporary board shall declare that the district was defeated and enter the result in its minutes. A copy of the order shall be filed with the commission.

(f) The order canvassing the results of the confirmation election shall contain a description of the district's boundaries and shall be filed with the executive director and in the deed records of the county or counties in which the district is located.

(g) The temporary board shall also declare the persons receiving the highest number of votes for directors to have been elected as permanent directors.

(h) Unless otherwise agreed, the directors shall decide the initial terms of office by lot, with a simple majority of directors serving until the second succeeding directors election and the remaining directors serving until the next directors election.

(i) The provisions of this section shall not be applicable to any district exercising the powers of Chapter 375, Local Government Code, or any district created by a special Act of the legislature that does not require a confirmation election.

Sec. 49.103. TERMS OF OFFICE OF DIRECTORS. (a) Except as provided by Section 49.102, the members of the board of a district shall serve for four-year terms.

(b) An election shall be held on the uniform election date, established by the Election Code, in either January or May of each even-numbered year to elect the appropriate number of directors.

(c) The permanent directors may assign a position number to each director's office, in which case directors shall thereafter be elected by position and not at large.

(d) A district may provide for the election of all directors, or a majority of directors, from single-member districts, which shall be geographically described within the boundaries of the district in a manner that is equitable for the electors within such districts and within the district generally.

(e) Section 49.002 notwithstanding, in all areas of conflict the provisions of Subsection (b) shall take precedence over all prior statutory enactments.

(f) This section does not apply to any special law district or authority that is not required by the law creating the district or authority to elect its directors by the public.

Sec. 49.104. ALTERNATIVE ELECTION PROCEDURES. (a) Notwithstanding the provisions and requirements of the Election Code and general laws, any two or more districts situated in the same county and in which substantially all of the land is being or has been developed as part of a single community development plan and which are served by common water supply and waste disposal systems may by mutual agreement designate a common election office and common early and regular polling places within one or more of the districts, but outside the boundaries of one or more of the districts, for the conduct of director election proceedings and early and regular balloting in director elections. This alternative election procedure may only be used if the common election office and polling places so designated:

(1) are within buildings open to the public;

(2) are within the boundaries of at least one of the districts;

(3) meet the requirements of the Election Code and general laws as polling places; and

(4) are located not more than five miles from any portion of the boundaries of any of the participating districts.

(b) Such districts may also agree upon and designate a common election officer and common early and regular voting officials for some or all of the director elections to be simultaneously conducted at a common location, any of whom may be nonelective employees of one or more of the districts, so long as the early and regular voting officials are qualified voters within at least one of the districts.

Sec. 49.105. VACANCIES. (a) Except as otherwise provided in this code, all vacancies on the board and in other offices shall be filled for the unexpired term by appointment of the board.

(b) If the number of directors is reduced to fewer than a majority, the vacancies shall be filled by appointment by the commission or the county commissioners court if the district was created by the county commissioners court. An appointed director shall serve for the unexpired term of the director he or she is replacing.

(c) In the event of a failure to elect one or more members of the board of a district resulting from the absence of, or failure to vote by, the qualified voters in the district, the current members of the board holding the positions not filled at such election shall be deemed to have been reelected and shall serve an additional term of office.

Sec. 49.106. BOND ELECTIONS. (a) Before an election is held to authorize the issuance of bonds, other than refunding bonds, there shall be filed in the office of the district and open to inspection by the public an engineer's report covering the land, improvements, facilities, plants, equipment, and appliances to be purchased or constructed and their estimated cost, together with maps, plats, profiles, and data fully showing and explaining the report.

(b) Notice of a bond election shall contain the proposition or propositions to be voted upon, which includes the estimate of the probable cost of design, construction, purchase, and acquisition of improvements and additions thereto, and incidental expenses connected with such improvements and the issuance of bonds.

(c) A bond election may be held on the same day as any other district election. The bond election may be called by a separate election order or as a part of any other election order. The board may submit multiple purposes in a single proposition at an election.

Sec. 49.107. OPERATION AND MAINTENANCE TAX. (a) A district may levy and collect a tax for operation and maintenance purposes, including funds for planning, constructing, acquiring, maintaining, repairing, and operating all necessary land, plants, works, facilities, improvements, appliances, and equipment of the district and for paying costs of proper services, engineering and legal fees, and organization and administrative expenses.

(b) An operation and maintenance tax may not be levied by a district until it is approved by a majority of the electors voting at an election held for that purpose. After such a tax has been authorized by the district's voters, the board shall be authorized to levy the tax and have it assessed and collected as other district taxes.

(c) An operation and maintenance tax election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) The proposition in an operation and maintenance tax election may be for a specific maximum rate or for an unlimited rate.

(e) If a district has any surplus operation and maintenance tax funds that are not needed for the purposes for which they were collected, the funds may be used for any lawful purpose.

(f) Before a district reimburses a developer of property in the district, as that term is defined in Section 49.052(d), or its assigns, from operation and maintenance tax funds, for planning, constructing, or acquiring facilities, the district shall obtain approval by the executive director.

Sec. 49.108. CONTRACT ELECTIONS. (a) A contract may provide that the district will make payment under the contract from proceeds from the sale of notes or bonds, from taxes, or from any other income of the district or any combination of these.

(b) A district may make payments under a contract from taxes other than operation and maintenance taxes after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(c) A contract election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) A contract approved by the voters will constitute an obligation against the taxing power of the district to the extent provided in the contract.

[Sections 49.109-49.150 reserved for expansion]

#### SUBCHAPTER E. FISCAL PROVISIONS

Sec. 49.151. EXPENDITURES. (a) Except as hereinafter provided, a district's money may be disbursed only by check, draft, order, or other instrument that shall be signed by at least a majority of the directors.

(b) The board may by resolution allow the general manager, treasurer, bookkeeper, or other employee of the district to sign disbursements.

(c) The board may by resolution allow disbursements to be transferred by federal reserve wire system to accounts in the name of the district.

Sec. 49.152. PURPOSES FOR BORROWING MONEY. The district may borrow money for any corporate purpose or combination of corporate purposes only in compliance with the methods and procedures specifically provided by this chapter or by general law.

Sec. 49.153. REVENUE NOTES. (a) The board, without the necessity of an election, may borrow money on negotiable notes of the district to be paid solely from the revenues derived from the ownership of all or any designated part of the district's works, plants, improvements, facilities, or equipment after deduction of the reasonable cost of maintaining and operating the facilities.

(b) The notes may be first or subordinate lien notes within the discretion of the board, but no obligation may ever be a charge on the

property of the district or on taxes levied or collected by the district but shall be solely a charge on the revenues pledged for the payment of the obligation. No part of the obligation may ever be paid from taxes levied or collected by the district.

(c) A district may not execute a note for a term longer than three years unless the commission issues an order approving the note.

(d) This section does not apply to special water authorities.

Sec. 49.154. BOND ANTICIPATION NOTES; TAX ANTICIPATION NOTES. (a) The board may declare an emergency in the matter of funds not being available to pay principal of and interest on any bonds of the district payable in whole or in part from taxes or to meet any other needs of the district and may issue negotiable tax anticipation notes or negotiable bond anticipation notes to borrow the money needed by the district without advertising or giving notice of the sale. Bond anticipation notes and tax anticipation notes shall mature within one year of their date.

(b) Tax anticipation notes may be issued for any purpose for which the district is authorized to levy taxes, and tax anticipation notes shall be secured with the proceeds of taxes to be levied by the district in the succeeding 12-month period. The board may covenant with the purchasers of the notes that the board will levy a sufficient tax to pay the principal of and interest on the notes and pay the costs of collecting the taxes.

(c) Bond anticipation notes may be issued for any purpose for which bonds of the district may have previously been voted or may be issued for the purpose of refunding previously issued bond anticipation notes. A district may covenant with the purchasers of the bond anticipation notes that the district will use the proceeds of sale of any bonds in the process of issuance for the purpose of refunding the bond anticipation notes, in which case the board will be required to use the proceeds received from sale of the bonds in the process of issuance to pay principal, interest, or redemption price on the bond anticipation notes.

(d) Districts required to seek commission approval of bonds must have an application for such approval on file with the commission prior to the issuance of bond anticipation notes.

Sec. 49.155. REPAYMENT OF EXPENSES. (a) The district may pay all costs and expenses necessarily incurred in the organization and operation of a district during creation and construction periods including, but not limited to, the following:

- (1) organizational, administrative, and operating expenses;
- (2) the cost of investigation and making plans;
- (3) the cost of the engineer's report;
- (4) legal fees; and
- (5) any other incidental expenses.

(b) For purposes of this section, construction periods shall mean any periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district, but in no event longer than five years.

(c) The district may reimburse any person for money advanced for the purposes in Subsection (a) and may be charged interest on such funds.



(d) These payments may be made from money obtained from the issuance of notes or the sale of bonds issued by the district or out of maintenance taxes or other revenues of the district.

Sec. 49.156. DEPOSITORY. (a) The board, by order or resolution, shall designate one or more banks or savings associations within the state to serve as the depository for the funds of the district. The board shall not be required to advertise or solicit bids in selecting its depositories.

(b) To the extent that funds in the depository banks or savings associations are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by Chapter 2257, Government Code (Public Funds Collateral Act).

(c) The board may authorize a designated representative to supervise the substitution of securities pledged to secure the district's funds.

Sec. 49.157. INVESTMENTS. (a) All district deposits and investments shall be governed by Subchapter A, Chapter 2256, Government Code (Public Funds Investment Act).

(b) The board may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for the investments on such terms as the board considers advisable.

Sec. 49.158. FISCAL YEAR. Within 30 days after a district becomes financially active, the board shall adopt a fiscal year by a formal board resolution. The district shall notify the executive director of the adopted fiscal year within 30 days after adoption. The district may change its fiscal year at any time; provided, however, it may not be changed more than once in any 24-month period. After any change in the district's fiscal year, the district shall notify the executive director of the changed fiscal year within 30 days after adoption.

[Sections 49.159-49.180 reserved for expansion]

#### SUBCHAPTER F. ISSUANCE OF BONDS

Sec. 49.181. AUTHORITY OF COMMISSION OVER ISSUANCE OF DISTRICT BONDS. (a) A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to refunding bonds or bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, or the Texas Water Development Board.

(b) A district may submit to the commission a written application for investigation of feasibility. An engineer's report describing the project, including the data, profiles, maps, plans, and specifications prepared in connection with the report, must be submitted with the application.

(c) The executive director shall examine the application and the report and shall inspect the project area. The district shall, on request, supply the executive director with additional data and information necessary for an investigation of the application, the engineer's report, and the project.

(d) The executive director shall prepare a written report on the project and include suggestions, if any, for changes or improvements in the project. The executive director shall retain a copy of the report and send a copy of the report to both the commission and the district.

(e) The commission shall consider the application, the engineer's report, the executive director's report, and any other evidence allowed by commission rule to be considered in determining the feasibility of the project.

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as appropriate, the issuance of the bonds. The commission shall retain a copy of the order and send a copy of the order to the district.

(g) Notwithstanding any provision of this code to the contrary, the commission may approve the issuance of bonds of a district without the submission of plans and specifications of the improvements to be financed with the bonds. The commission may condition the approval on any terms or conditions considered appropriate by the commission.

(h) This section does not apply to a district if:

(1) the district's boundaries include one entire county;

(2) the district was created by a special Act of the legislature and:

(A) the district is located entirely within one county;

(B) entirely within one or more home-rule municipalities;

(C) the total taxable value of the real property and improvements to the real property zoned by one or more home-rule municipalities for residential purposes and located within the district does not exceed 25 percent of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(D) the district was not required by law to obtain commission approval of its bonds before the effective date of this section;

(3) the district is a special water authority; or

(4) the district is governed by a board of directors appointed in whole or in part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide water and sewer services to residential retail customers as its principal function.

Sec. 49.182. COMMISSION SUPERVISION OF PROJECTS AND IMPROVEMENTS. (a) During construction of projects and improvements approved by the commission under this subchapter, no substantial alterations may be made in the plans and specifications without the approval of the commission in accordance with commission rules.

(b) The executive director may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications approved by the commission.

(c) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, the executive director shall give written notice immediately by certified mail to the district's manager and to each board member.

(d) If within 10 days after the notice is mailed the board does not take steps to ensure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of this fact to the attorney general.

(e) After receiving this notice, the attorney general may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

Sec. 49.183. BOND SALES. (a) Except for refunding bonds, or bonds sold to a state or federal agency, bonds issued by a district shall be sold after advertising for and receiving competitive sealed bids and shall be awarded to the bidder whose bid produces the lowest net effective interest rate to the district.

(b) Except for refunding bonds, or bonds sold to a state or federal agency, after any bonds are finally approved and before they are sold by a district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the state attorney general.

(c) If the district is issuing bonds and refunding bonds as one issue and if the initial principal amount of refunding bonds is 50 percent or more of the total initial principal amount of bonds being issued, for the purposes of this section, the issue shall be considered to be refunding bonds and competitive bids shall not be required.

(d) A district's bonds are negotiable instruments within the meaning and purposes of the Business & Commerce Code. A district's bonds may be issued and bear interest in accordance with Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes); Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes); the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes); and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes). Except for this subsection, this section does not apply to special water authorities or districts defined in Section 49.181(h)(4).

(e) Subsections (a) and (b) do not apply to district bonds issued pursuant to Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

Sec. 49.184. APPROVAL OF BONDS BY ATTORNEY GENERAL; REGISTRATION OF BONDS. (a) Before bonds issued by a district are delivered to the purchasers, a certified copy of all proceedings relating to organization of the district for first bond issues and issuance of the bonds and other relevant information shall be sent to the attorney general.

(b) The attorney general shall carefully examine the bonds, with regard to the record and the constitution and laws of this state governing the issuance of bonds, and the attorney general shall officially approve and certify the bonds if he or she finds that they conform to the record and the constitution and laws of this state and are valid and binding obligations of the district.

(c) After the attorney general approves and certifies the bonds, the comptroller shall register them in a book kept for that purpose and shall record the certificate of the attorney general.

(d) After the approval and registration of the bonds by the comptroller, they shall be incontestable in any court or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

(e) A contract or lease may be submitted to the attorney general along with the bond records, and, if submitted, the approval by the attorney general of the bonds shall constitute an approval of the contract or lease and the contract or lease shall be incontestable.

Sec. 49.185. EXEMPTIONS. This subchapter shall not apply to districts engaged in the distribution and sale of electric energy to the public.

[Sections 49.186-49.190 reserved for expansion]

#### SUBCHAPTER G. AUDIT OF DISTRICTS

Sec. 49.191. DUTY TO AUDIT. (a) The board shall have the district's fiscal accounts and records audited annually at the expense of the district.

(b) In all areas of conflict, the provisions of this subchapter shall take precedence over all prior statutory enactments.

(c) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(d) The audit required by this section shall be completed within 120 days after the close of the district's fiscal year.

Sec. 49.192. FORM OF AUDIT. The executive director shall adopt accounting and auditing manuals and, except as otherwise provided by the manuals, the district audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

Sec. 49.193. FINANCIAL REPORTS. The district's depository, the district's treasurer, and the district's bookkeeper, if any, who receives or has control over any district funds shall keep a full and itemized account of district funds in its, his, or her possession. Such itemized accounts and records shall be available for audit.

Sec. 49.194. FILING OF AUDITS, AFFIDAVITS, AND FINANCIAL REPORTS. (a) After the board has approved the audit, it shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year.

(b) If the board refuses to approve the annual audit report, the board shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year, accompanied by a statement from the board explaining the reasons for its failure to approve the report.

(c) Copies of the audit, the annual financial dormancy affidavit, or annual financial report described in Sections 49.197 and 49.198 of this subchapter shall be filed annually in the office of the district.

(d) Each district shall file with the executive director an annual filing affidavit in a format prescribed by the executive director, executed by a duly authorized representative of the board, stating that all copies of the annual audit report, annual financial dormancy affidavit, or annual financial report have been filed under this section.

(e) The annual filing affidavit shall be submitted with the applicable annual document when it is submitted to the executive director for filing as prescribed by this subchapter.

(f) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

Sec. 49.195. REVIEW BY EXECUTIVE DIRECTOR. (a) The executive director may review the audit report of each district.

(b) The commission may request that the state auditor assist in the establishment of standards and procedures for review of district audits by the executive director.

(c) If the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes, or board rules, or if the executive director has any recommendations, he or she shall notify the board and the district's auditor.

(d) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this subchapter, the board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(e) If the audit report indicates that any penal law has been violated, the executive director shall notify the appropriate county or district attorney and the attorney general.

Sec. 49.196. ACCESS TO AND MAINTENANCE OF DISTRICT RECORDS. (a) The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records the executive director considers necessary.

(b) All district fiscal records shall be prepared on a timely basis and maintained in an orderly manner in accordance with generally accepted accounting principles. The fiscal records shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purposes of recording its fiscal affairs and preparing an audit, during which time the fiscal records are under the control of the district's auditor.

Sec. 49.197. FINANCIALLY DORMANT DISTRICTS. (a) A financially dormant district is a district that had:

(1) \$500 or less of receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(2) \$500 or less of disbursements of funds during the calendar year;

(3) no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(4) no cash or investments that exceeded \$5,000 at any time during the calendar year.

(b) A financially dormant district may elect to submit to the executive director a financial dormancy affidavit instead of complying with the audit requirements of Section 49.191.

(c) The annual financial dormancy affidavit shall be prepared in a format prescribed by the executive director and shall be submitted for filing by a duly authorized representative of the district.

(d) The affidavit must be filed annually on or before January 31 with the executive director until such time as the district becomes financially active and the board adopts a fiscal year; thereafter, the district shall file annual audit reports as prescribed by this subchapter.

(e) A district that becomes financially dormant after having been financially active shall be required to file annual financial dormancy affidavits on or before January 31, until the district is either dissolved or again becomes financially active.

(f) Districts governed by this section are subject to periodic audits by the executive director.

Sec. 49.198. AUDIT REPORT EXEMPTION. (a) A district that is not collecting taxes may elect to file annual financial reports with the executive director in lieu of the district's compliance with Section 49.191 provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross receipts from operations, loans, or contributions in excess of \$100,000 during the fiscal period; and

(3) the district's cash and temporary investments were not in excess of \$100,000 at any time during the fiscal period.

(b) The annual financial report must be accompanied by an affidavit attesting to the accuracy and authenticity of the financial report signed by a duly authorized representative of the district.

(c) The annual financial report and affidavit in a format prescribed by the executive director must be on file with the executive director within 45 days after the close of the district's fiscal year.

(d) Districts governed by this section are subject to periodic audits by the executive director.

Sec. 49.199. POLICIES AND AUDITS OF DISTRICTS. (a) Subject to the law governing the district, the board shall adopt the following in writing:

(1) a code of ethics for district directors, officers, employees, and persons who are engaged in handling investments for the district;

(2) a policy relating to travel expenditures;

(3) a policy relating to district investments that ensures that:

(A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and

(B) periodic review is made of district investments to evaluate investment performance and security;

(4) policies and procedures for selection, monitoring, or review and evaluation of professional services;

(5) a uniform method of accounting and reporting for industrial development bonds and pollution control bonds that complies with requirements of the commission; and

(6) policies that ensure a better use of management information including:

(A) budgets for use in planning and controlling cost;

(B) an audit committee of the board; and

(C) uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working papers and that use "Governmental Accounting and Financial Reporting Standards."

(b) The state auditor may audit the financial transactions of any district if the state auditor determines that the audit is necessary.

Sec. 49.200. REVIEW AND COMMENT ON BUDGET OF CERTAIN DISTRICTS. A district that provides wholesale potable water and wastewater services shall adopt a program that provides such wholesale customers an opportunity to review and comment on the district's annual budget that applies to their services before that budget is adopted by the board.

[Sections 49.201-49.210 reserved for expansion]

#### SUBCHAPTER H. POWERS AND DUTIES

Sec. 49.211. POWERS. (a) A district shall have the functions, powers, authority, rights, and duties that will permit accomplishment of the purposes for which it was created or the purposes authorized by the constitution, this code, or any other law.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation or the purposes authorized by this code or any other law.

Sec. 49.212. FEES AND CHARGES. (a) A district may adopt and enforce all necessary charges, fees, or rentals, in addition to taxes, for providing or making available any district facility or service.

(b) A district may require a deposit for any services or facilities furnished and the district may or may not provide that the deposit will bear interest.

(c) Subject to observance of the procedure appropriate to the circumstances, a district may discontinue any or all facilities or services to prevent an abuse or to enforce payment of an unpaid charge, fee, or rental due the district, including taxes that have been delinquent for not less than six months.

(d) Notwithstanding any provision of law to the contrary, a district that charges a fee that is an impact fee as described in Section 395.001(4), Local Government Code, must comply with Chapter 395, Local

Government Code. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, that (i) does not exceed three times the actual and reasonable costs to the district for such work or (ii) if made to a nontaxable entity, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported bonds of the district, shall not be deemed or considered to be an impact fee under Chapter 395, Local Government Code.

Sec. 49.213. AUTHORITY TO ISSUE CONTRACTS. (a) A district may contract with a person or any public or private entity for the joint construction, financing, ownership, and operation of any works, improvements, facilities, plants, equipment, and appliances necessary to accomplish any purpose or function permitted by a district, or a district may purchase an interest in any project used for any purpose or function permitted by a district.

(b) A district may enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by a district.

(c) A district may enter into contracts, which may be of unlimited duration, with persons or any public or private entities on the terms and conditions the board may consider desirable, fair, and advantageous for:

(1) the purchase or sale of water;

(2) the collection, transportation, treatment, and disposal of its domestic, industrial, and communal wastes or the collection, transportation, treatment, and disposal of domestic, industrial, and communal wastes of other persons;

(3) the gathering, diverting, and control of local storm water, or other local harmful excesses of water;

(4) the continuing and orderly development of the land and property within the district through the purchase, construction, or installation of works, improvements, facilities, plants, equipment, and appliances that the district may otherwise be empowered and authorized to do or perform so that, to the greatest extent reasonably possible, considering sound engineering and economic practices, all of the land and property may be placed in a position to ultimately receive the services of the works, improvements, plants, facilities, equipment, and appliances;

(5) the maintenance and operation of any works, improvements, facilities, plants, equipment, and appliances of the district or of another person or public or private entity;

(6) the collection, treatment, and disposal of municipal solid wastes;

(7) the exercise of any other rights, powers, and duties granted to a district.

Sec. 49.214. CONFLICTS OF INTEREST IN CONTRACTS. The provisions of Chapter 171, Local Government Code, shall apply to the award of district contracts.



Sec. 49.215. SERVICE TO AREAS OUTSIDE THE DISTRICT. (a) A district may purchase, construct, acquire, own, operate, repair, improve, or extend all works, improvements, facilities, plants, equipment, and appliances necessary to provide any services or facilities authorized to be provided by the district to areas contiguous to or in the vicinity of the district provided the district does not duplicate a service or facility of another public entity. A district providing potable water and sewer utility services to household users shall not provide services or facilities to serve areas outside the district that are also within the corporate limits of a city without securing a resolution or ordinance of the city granting consent for the district to serve the area within the city.

(b) To secure money for this purpose, a district is authorized to issue and sell negotiable bonds and notes payable from the levy and collection of ad valorem taxes on all taxable property within the district or from all or any designated part of the revenues received from the operation of the district's works, improvements, facilities, plants, equipment, and appliances or from a combination of taxes and revenues.

(c) Any bonds and notes may be issued upon the terms and conditions set forth in this code.

(d) A district shall not be required to hold a certificate of convenience and necessity as a precondition for providing retail water or sewer service to any customer or service area, notwithstanding the fact that such customer or service area may be located either within or outside the boundaries of the district or has previously received water or sewer service from an entity required by law to hold a certificate of convenience and necessity as a precondition for such service. This subsection does not authorize a district to provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without that district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

(e) A district is authorized to establish, maintain, revise, charge, and collect the rates, fees, rentals, tolls, or other charges for the use, services, and facilities that provide service to areas outside the district that are considered necessary and may be higher than those charged for comparable service to users within the district.

(f) The rates, fees, rentals, tolls, or other charges shall be at least sufficient to meet the expense of operating and maintaining the services and facilities for a water and sanitary sewer system serving areas outside the district and to pay the principal of and interest and redemption price on bonds issued to purchase, construct, acquire, own, operate, repair, improve, or extend the services or facilities.

Sec. 49.216. ENFORCEMENT BY PEACE OFFICERS. (a) A district may contract for or employ its own peace officers with power to make arrests when necessary to prevent or abate the commission of:

(1) any offense against the rules of the district when the offense or threatened offense occurs on any land, water, or easement owned or controlled by the district;

(2) any offense involving injury or detriment to any property owned or controlled by the district; and

(3) any offense against the laws of the state.

(b) A district may appoint reserve peace officers who may be called to serve as peace officers by the district during the actual discharge of their official duties.

(c) A reserve peace officer serves at the discretion of the district and may be called into service if the district considers it necessary to have additional officers to preserve the peace in or enforce the law of the district.

(d) A reserve peace officer on active duty and actively engaged in assigned duties has the same rights, privileges, and duties as any other peace officer of the district.

(e) Any peace officer, before beginning to perform any duties and at the time of appointment, must take an oath and execute a bond conditioned on faithful performance of such officer's duties in the amount of \$1,000 payable to the district. The oath and the bond shall be filed in the district office.

Sec. 49.217. OPERATION OF CERTAIN MOTOR VEHICLES ON OR NEAR PUBLIC FACILITIES. (a) In this section, "motor vehicle" means a self-propelled device in, upon, or by which a person or property is or may be transported or drawn on a road or highway.

(b) Except as provided in Subsections (c) and (d), a person may not operate a motor vehicle on a levee, in a drainage ditch, or on land adjacent to a levee, canal, ditch, exposed conduit, pipeline, pumping plant, storm water facility, or other facility for the transmission, storage, treatment, or distribution of water, sewage, or storm water owned or controlled by a district.

(c) A district may authorize the use of motor vehicles on land that it owns or controls by posting signs on the property.

(d) This section does not prohibit a person from:

(1) driving on a public road or highway; or

(2) operating a motor vehicle used for repair or maintenance of public water, sewer, or storm water facilities.

(e) A person who operates a motor vehicle in violation of Subsection (b) commits an offense. An offense under this section is a Class C misdemeanor, except that if a person has been convicted of an offense under this section, a subsequent offense is a Class B misdemeanor.

Sec. 49.218. ACQUISITION OF PROPERTY. (a) A district or a water supply corporation may acquire land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the district's or water supply corporation's purposes provided in this code or in any other law.

(b) A district or water supply corporation shall have the right to acquire property by gift, grant, or purchase and the right to acquire property shall include property considered necessary for the construction,

improvement, extension, enlargement, operation, or maintenance of the plants, works, improvements, facilities, equipment, or appliances of a district or a water supply corporation.

(c) A district or water supply corporation may acquire either the fee simple title to or an easement on all land, both public and private, either inside or outside its boundaries and may acquire the title to or an easement on property other than land held in fee.

(d) A district or water supply corporation may also lease property from others for its use on such terms and conditions as the board of the district or the board of directors of the water supply corporation may determine to be advantageous.

Sec. 49.219. ACQUISITION OF EXISTING FACILITIES. Any district may acquire by agreement all or any part of existing water, sanitary sewer, or drainage systems of any water supply corporation, including works, improvements, facilities, plants, equipment, appliances, contract rights, and other assets and rights that are completed, partially completed, or under construction, and in connection therewith a district may assume all or any part of the contracts, indebtedness, or obligations of the corporation related to said systems, including any contracts, indebtedness, or obligations related to or payable from the revenues of said systems, and may perform all or any part of the obligations of said corporation in the same manner and to the same extent that any other purchaser or assignee could be bound on any such contracts, indebtedness, or obligations. Before assuming any indebtedness or obligations of such corporation related to any such system, a district other than a special water authority shall obtain the approval of the commission of such assumption.

Sec. 49.220. RIGHT TO USE EXISTING RIGHTS-OF-WAY. All districts or water supply corporations are given rights-of-way, within, along, under, and across all public, state, county, city, town, or village roads, highways, and rights-of-way and other public rights-of-way without the requirement for surety bond or security; provided, however, that the entity having jurisdiction over such roads, highways, and rights-of-way may require indemnification. A district or water supply corporation shall not proceed with any action to change, alter, or damage a portion of the state highway system without having first obtained the written consent of the Texas Department of Transportation, and the placement of any facility of a district or water supply corporation within state highway right-of-way shall be subject to department regulation.

Sec. 49.221. RIGHT TO ENTER LAND. (a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.

(b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time

for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Sec. 49.222. EMINENT DOMAIN. (a) A district or water supply corporation may acquire by condemnation any land, easements, or other property inside or outside the district boundaries, or the boundaries of the certificated service area for a water supply corporation, necessary for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or purposes, and may elect to condemn either the fee simple title or a lesser property interest.

(b) The right of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code, except that a district or a water supply corporation shall not be required to give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party and shall not be required to deposit more than the amount of any award in any suit.

(c) The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

Sec. 49.223. COSTS OF RELOCATION OF PROPERTY. (a) In the event that the district or the water supply corporation, in the exercise of the power of eminent domain or power of relocation, or any other power, makes necessary the relocation, raising, lowering, rerouting, or change in grade of or alteration in construction of any road, bridge, highway, railroad, electric transmission line, telegraph, or telephone properties, facilities, or pipelines, all necessary relocations, raising, lowering, rerouting, or change in grade or alteration of construction shall be done at the sole expense of the district or the water supply corporation unless otherwise agreed to in writing. Such relocation shall be accomplished in a timely manner so that the project of the district or the water supply corporation is not delayed.

(b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

Sec. 49.224. POWER TO CONDEMN CEMETERIES. (a) The use of land for the construction of district dams and creation of lakes and reservoirs for the purpose of conservation and development of the natural resources of this state is hereby declared to be superior to all other uses; and for these purposes only a district has the power of eminent domain to acquire land, improvements, and other property owned and held for cemeteries or burial places necessary for the construction of a dam or that lies inside the area to be covered by the lake or reservoir or within 300 feet of the high water line of the lake or reservoir.

(b) Except as otherwise provided by this subchapter, the procedure in condemnation proceedings is governed by Chapter 21, Property Code.

(c) Notice shall be served on the title owner of the land on which the cemetery is situated as provided in Chapter 21, Property Code. General notice to persons having relatives interred in the cemetery shall be given by publication for two consecutive weeks in a newspaper circulated in the county in which the cemetery is situated.

(d) The measure of damages in these eminent domain proceedings shall be assessed as in other condemnation cases. An additional amount of damages shall be assessed to cover the cost of removing and reintering the bodies interred in the cemetery or burial place and the cost of removing and resetting the monuments or markers erected at the graves.

(e) The additional assessment shall be deposited in the registry of the county court and disbursed only for the purpose of removing and reintering the bodies in other cemeteries in Texas agreed on between the district and the relatives of the deceased persons.

(f) If in any case the district and the relatives of a deceased person cannot agree within 30 days on a cemetery for reinterment, or no relatives appear within that time, then the county judge shall designate the cemetery for reinterment.

(g) Instead of depositing the additional assessment in the registry of the court, the district may execute a bond sufficient to cover costs of removing and reintering the bodies. The bond shall be payable to and approved by the county judge and conditioned that the bodies will be removed and reinterred as provided by this section.

Sec. 49.225. LEASES. A district may lease any of its property, real or personal, to any person. The lease may contain the terms and provisions that the board determines to be advantageous to the district.

Sec. 49.226. SALE OR EXCHANGE OF SURPLUS LAND OR PERSONAL PROPERTY. (a) Any land, interest in land, or personal property owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the district. Except as provided in Subsection (b), land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the district.

(b) Any property dedicated to or acquired by the district without expending district funds may be abandoned or released to the original grantor, the grantor's heirs, assigns, executors, or successors upon terms and conditions deemed necessary or advantageous to the district and without receiving compensation for such abandonment or release. District property may also be abandoned, released, exchanged, or transferred to another district, municipality, county, countywide agency, or authority upon terms and conditions deemed necessary or advantageous to the district. Narrow strips of property resulting from boundary or surveying conflicts or similar causes, or from insubstantial encroachments by abutting property owners, may be abandoned, released, exchanged, or transferred to such

abutting owners upon terms and conditions deemed necessary or advantageous to the district. Chapter 272, Local Government Code, shall not apply to this subsection.

(c) Before either a public or a private sale of real property not required by the district, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

(d) If the district has outstanding bonds secured by a pledge of tax revenues, the proceeds of the sale of property not required by the district shall be applied to retire outstanding bonds of the district when required by the district's applicable bond resolutions.

(e) If the district does not have any outstanding bonds, the proceeds derived from the sale of the personal property or land not required by the district may be used for any lawful purpose.

Sec. 49.227. AUTHORITY TO ACT JOINTLY. A district or water supply corporation may act jointly with any other person or entity, private or public, whether within the State of Texas or the United States, in the performance of any of the powers and duties permitted by this code or any other laws.

Sec. 49.228. DAMAGE TO PROPERTY. A person who wilfully destroys, defaces, damages, or interferes with district or water supply corporation property is guilty of a Class B misdemeanor.

Sec. 49.229. GRANTS AND GIFTS. A district may accept grants, gratuities, advances, and loans in any form from any source approved by the board, including any governmental entity, any private or public corporation, and any other person and may make and enter into contracts, agreements, and covenants the board considers appropriate in connection with acceptance of grants, gratuities, advances, and loans.

Sec. 49.230. AREA-WIDE WASTEWATER TREATMENT. The powers and duties conferred on the district are granted subject to the policy of the state to encourage the development and use of integrated area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state whenever economically feasible and competitive to do so, it being an objective of the policy to avoid the economic burden to the people and the impact on the quality of the water in the state that result from the construction and operation of numerous small wastewater collection, treatment, and disposal facilities to serve an area when an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided.

Sec. 49.231. STANDBY FEES. (a) In this section:

(1) "Standby fee" means a charge, other than a tax, imposed on undeveloped property for the availability of potable water, sanitary sewer, or drainage facilities and services.

(2) "Undeveloped property" means a tract, lot, or reserve in the district to which no potable water, sanitary sewer, or drainage connections have been made for which:

(A) water, sanitary sewer, or drainage facilities and services are available;

(B) water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or

(C) major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.

(b) A district that proposes to provide or actually provides retail potable water or sewer utility services, or drainage services as the principal function of the district, may, with the approval of the commission, adopt and impose on the owners of undeveloped property in the district a standby fee in addition to taxes levied by the district. A district may not impose a standby fee for debt service purposes on undeveloped property unless the facilities and services available to the property have been financed by the district; however, a district may impose a standby fee for operating and maintaining facilities that it has not financed. The district may impose standby fees in different amounts to fairly reflect the level and type of services and facilities available to serve different property. The intent of the standby fee is to distribute a fair portion of the cost burden for operating and maintaining the facilities and for financing capital costs of the facilities to owners of property who have not constructed improvements but have potable water, sewer, or drainage capacity available. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses, to pay debt service on the bonds, or both.

(c) If a district described in Subsection (b) desires to adopt and impose a standby fee, the district shall submit to the commission an application for authority to adopt and impose the standby fee. The application must describe the tracts of undeveloped property in the district and state the amount of the proposed fee.

(d) The executive director shall examine an application submitted under Subsection (c) and shall investigate the financial condition of the district, including the district's assets, liabilities, sources of revenue, level of utility service rates, and level of debt service and maintenance tax rates. On the request of the executive director, the district shall submit any information the executive director considers relevant to the examination and investigation. The executive director shall prepare a written report on the application and the district's financial condition, retain a copy of the report, and send a copy of the report to the commission and the district.

(e) The commission shall hold a hearing on an application submitted under Subsection (c). Notice of the hearing shall be published in a newspaper of general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing. The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing by certified mail, return receipt requested, to each owner of undeveloped property in the district. On the date the application is filed, the district's tax assessor and collector shall certify to the district the names of the persons owning undeveloped land

in the district as reflected by the most recent certified tax roll of the district. Notice of the hearing must be sent by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any hearings. To be effective, the written request must be received by the district not later than the 60th day before the date of the hearing. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the district, and a brief property description.

(f) The commission shall consider the application, the report of the executive director, and any other evidence allowed by commission rule. The commission may approve the application only if the commission finds that the fee is necessary to maintain the financial integrity and stability of the district and fairly allocates the costs of district facilities and services among property owners of the district.

(g) After a hearing on an application under Subsection (e), the commission shall issue an order approving or disapproving the application. The commission shall retain a copy of the order and send a copy of the order to the district.

(h) The commission may approve the adoption and imposition of the standby fee for a period of not more than three years. The imposition of a standby fee may be renewed for additional periods of not more than three years each in the same manner provided in this section for initial approval of the standby fee.

(i) If approved by the commission, the board by resolution or order may impose an annual standby fee on undeveloped land in the district.

(j) The board may:

(1) charge interest, at the rate of one percent a month, on a standby fee not paid in a timely manner in accordance with the resolution or order imposing the standby fee; and

(2) refuse to provide potable water, sanitary sewer, or drainage service to the property for which the fee was assessed until all delinquent standby fees on the property and interest on those fees are fully paid.

(k) A standby fee imposed under this section is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of the obligation on transfer of title to the property. On January 1 of each year, a lien attaches to undeveloped property to secure payment of any standby fee imposed under this section and the interest, if any, on the fee. The lien has the same priority as a lien for taxes of the district.

(l) If a standby fee imposed under this section is not paid in a timely manner, a district may file suit to foreclose the lien securing payment of the fee and interest or to enforce the personal obligation for the fee and interest, or both. The district may recover, in addition to the fee and interest, reasonable costs, including attorney's fees, incurred by the district in enforcing the lien or obligation not to exceed 20 percent of the delinquent fee and interest. A suit authorized by this subsection must be filed not later than the fourth anniversary of the date the fee became due.



A fee delinquent for more than four years and interest on the fee are considered paid unless a suit is filed before the expiration of the four-year period.

(m) Chapter 395, Local Government Code, does not apply to a standby fee imposed under this section.

(n) For purposes of title insurance policies issued under the authority of Chapter 9, Insurance Code, standby fees are considered taxes.

Sec. 49.232. LABORATORY SERVICES. A district may contract with any person, within or without the boundaries of the district, to provide or receive laboratory services related to environmental, health, or drinking water testing.

[Sections 49.233-49.270 reserved for expansion]

#### SUBCHAPTER I. CONSTRUCTION CONTRACTS

Sec. 49.271. CONTRACTS FOR CONSTRUCTION WORK. (a) Any contract made by the board for construction work shall conform to the provisions of this chapter.

(b) The contract shall contain, incorporate by reference, or have attached to it the specifications, plans, and details for work included in the contract. All work shall be done in accordance with these plans and specifications and any authorized change orders under the supervision of the board or its designee.

(c) The district may adopt minimum criteria for the qualifications of bidders on its construction contracts and for sureties issuing payment and performance bonds. For contracts over \$25,000, the district shall require a person who bids to submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state, as a good faith deposit to ensure execution of the contract. If the successful bidder fails or refuses to enter into a proper contract with the district, or fails or refuses to furnish the bond required by law, the bidder forfeits the deposit.

(d) The district may also require attendance by a principal of each prospective bidder at mandatory pre-bid conferences and may make any reasonable additional requirements regarding the taking of bids the district may deem appropriate in order to obtain competitive bids from responsible contractors and to minimize contract disputes.

Sec. 49.272. REPORTS FURNISHED TO PROSPECTIVE BIDDERS. The board shall furnish to any person who desires to bid on construction work, and who makes a request in writing, a copy of the engineer's report or plans and specifications showing the details of the work to be done. The board may charge for each copy of the engineer's report or plans and specifications an amount sufficient to cover the cost of making the copy.

Sec. 49.273. CONSTRUCTION CONTRACT AWARD. (a) The board shall contract for construction in accordance with this section. The bidding documents, plans, specifications, and other data needed to bid on the project must be available at the time of the first advertisement and the advertisement shall state the location at which these documents may be reviewed.

(b) A construction contract may cover all the work to be provided by the district or the various elements of the work may be segregated for the purpose of receiving bids and awarding contracts. A contract may provide that the work will be constructed in stages over a period of years.

(c) A construction contract may provide for the payment of a total sum that is the completed cost of the work or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers, or a contract may be let and awarded in any other form or composite of forms and to any responsible person or persons that, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plants, improvements, facilities, works, equipment, and appliances.

(d) For construction contracts for \$25,000 or more, the board shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers circulated in each county in which part of the district is located. If one newspaper meets both of these requirements, publication in such newspaper is sufficient. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. The notice shall be published once a week for three consecutive weeks before the date that the bids are opened, and the first publication shall be not later than the 21st day before the date of the opening of the sealed bids.

(e) For construction contracts for \$15,000 or more but less than \$25,000, the board shall solicit written competitive bids on uniform written specifications from at least three bidders.

(f) For construction contracts of less than \$15,000, the board is not required to advertise or seek competitive bids.

(g) The board may not subdivide work to avoid the advertising requirements specified in this section.

(h) The board may not accept bids that include substituted items unless the substituted items were included in the original bid proposal and all bidders had the opportunity to bid on the substituted items or unless notice is given to all bidders at a mandatory pre-bid conference.

(i) Change orders to contracts may be issued only as a result of unanticipated conditions encountered during construction or changes in regulatory criteria or to facilitate project coordination with other political entities.

(j) The provisions of this subchapter do not apply to contracts for personal or professional services or for a utility service operator or to contracts made by a district engaged in the distribution and sale of electric energy to the public.

(k) The provisions of this subchapter do not apply to high technology procurements. The provisions of Sections 252.021(a) and 252.042, Local Government Code, shall apply to high technology procurements.

Sec. 49.274. EMERGENCY APPROVAL OF DISTRICT PROJECTS. If a district experiences an emergency condition that may create a serious

health hazard or unreasonable economic loss to the district that requires immediate corrective action, the district may negotiate limited duration contracts to make the necessary repairs. The district shall submit to the executive director details describing the specific serious health hazard or unreasonable economic loss as soon as practicable following the issuance of the contracts. Whenever possible, the district should obtain prior approval of the executive director before authorizing the contract, but failure to obtain prior approval shall not void the contract. This section does not apply to special water authorities.

Sec. 49.275. CONTRACTOR'S BOND. Any person, firm, partnership, or corporation to whom a contract is let must give good and sufficient performance and payment bonds in accordance with Chapter 2253, Government Code, and any minimum criteria for sureties issuing such bonds adopted by a district in accordance with Section 49.271.

Sec. 49.276. PAYMENT FOR CONSTRUCTION WORK. (a) The district shall pay the contract price of construction contracts only as provided in this section.

(b) The district will make progress payments under construction contracts monthly as the work proceeds, or at more frequent intervals as determined by the board or its designee, on estimates approved by the board or its designee.

(c) If requested by the district or district engineer, the contractor shall furnish a breakdown of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the district engineer may authorize material delivered on the site and preparatory work done to be considered if the consideration is specifically authorized by the contract and if the contractor furnishes satisfactory evidence that he has acquired title to the material and that it will be utilized on the work covered by the contract.

(d) In making progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the contract work. However, if the board at any time after 50 percent of the work has been completed finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the district, at its discretion may release to the contractor all or a portion of the excess amount. The district is not obligated to pay interest on amounts retained except as provided herein. The district shall not be obligated to pay any interest on the 10 percent retainage held on the first 50 percent of work completed. If the district holds any retainage on the remaining 50 percent of the work completed, the district shall pay interest on such retainage from the date the retainage is withheld to the date of payment to the contractor. The interest rate to be paid on such retainage shall be the rate of interest paid by the district's depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein.

(e) On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

Sec. 49.277. INSPECTION OF AND REPORTS ON CONSTRUCTION WORK. (a) The board shall have control of construction work being done for the district under contract to determine whether or not the contract is being fulfilled and shall have the construction work inspected by the district engineer or other designated person.

(b) During the progress of the construction work, the district engineer or other designated person shall submit to the board detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed the district engineer shall submit to the board a final detailed report including as-built plans of the facilities showing whether or not the contractor has fully complied with the contract.

[Sections 49.278-49.300 reserved for expansion]

#### SUBCHAPTER J. ANNEXATION OR EXCLUSION OF LAND

##### Sec. 49.301. ADDING LAND BY PETITION OF LANDOWNER.

(a) In addition to any other provision provided by law, the owner or owners of land whether or not contiguous to the district or otherwise may file with the board a petition requesting that there be included in the district the land described in the petition by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district. The petition may request the district to condition the annexation on certain conditions, including the voter authorization of bonds to serve the area to be annexed.

(b) If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxes that have been voted but are unissued, the board may require the petitioner or petitioners to assume their share of the outstanding bonds, notes, or other obligations and the voted but unissued tax bonds of the district and authorize the board to levy a tax on their property in each year while any of the bonds, notes, or other obligations payable in whole or in part from taxation are outstanding to pay their share of the indebtedness.

(c) The petition of the landowner to add land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

(d) The board shall hear and consider the petition and may add to the district the land described in the petition if it is feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district.

(e) If the district has bonds payable in whole or in part from taxation that are voted but unissued at the time of an annexation and the petitioners assume the bonds and authorize the district to levy a tax on their property to pay the bonds, then the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

(f) Granted petitions shall be filed for record and shall be recorded in the office of the county clerk of the county or counties in which the added land is located.

Sec. 49.302. ADDING LAND BY PETITION OF LESS THAN ALL THE LANDOWNERS. (a) In addition to the method of adding land to a district described in Section 49.301 of this subchapter, defined areas of land, whether or not they are contiguous to the district, may be annexed to the district in the manner set forth in this section.

(b) A petition requesting the annexation of a defined area signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the county or counties in which such area is located, or signed by 50 landowners if the number of landowners is more than 50, shall describe the land by metes and bounds or by lot and block number if there is a recorded plat of the area and shall be filed with the secretary of the board.

(c) It shall be the duty of the board to pass an order fixing a time and place at which the petition for annexation shall be heard that shall not be less than 30 days from the day of the order calling the hearing.

(d) The secretary of the board shall issue a notice setting forth the time and place of the hearing and describing the area proposed to be annexed. Notice of the hearing shall be given by posting copies of the notice in three public places in the district and in one public place in the area proposed to be annexed for at least 14 days before the day of the hearing and by publishing a copy of the notice in a newspaper of general circulation in the county or counties in which the area proposed to be annexed is located one time at least 14 days before the day of the hearing.

(e) If upon the hearing of the petition it is found by the board that the proposed annexation of the area to the district is feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district, then the board, by order entered in its minutes, may receive the proposed area as an addition to and to become a part of the district. The order adding the proposed territory to the district need not include all of the land described in the petition if at the hearing a modification or change is found necessary or desirable by the board.

(f) A copy of the order annexing land to the district, signed by a majority of the members of the board and attested by the secretary of the board, shall be filed and recorded in the deed records of the county or counties in which the district is located if the land is finally annexed to the district.

(g) After the order is recorded the area shall be a component part of the district.

(h) The annexed area shall bear its pro rata share of all bonds, notes, or other obligations or taxes that may be owed, contracted, or authorized by the district to which it has been added.

(i) Before the added area shall be subject to all or any part of the bonds, notes, obligations, or taxes created before the annexation of the area

to the district, the board shall order an election to be held in the district, as enlarged by reason of the annexation of the area, on the question of the assumption of the bonds, notes, obligations, and taxes by the annexed area.

(j) At the same election, the board may also submit a proposition on the question of whether the annexed area should assume its part of the bonds of the district payable in whole or in part from taxes that have been voted previously but not yet issued or sold and the levy of an ad valorem tax on all taxable property within the area annexed along with a tax on the rest of the district for the payment of the bonds.

(k) If the election results favorably, the district shall be authorized to issue its voted but unissued tax bonds even though the boundaries of the district have been changed since the original election approving the bonds.

(l) At the election called for the purpose of determining whether the annexed area shall assume the bonds, notes, or other obligations or taxes of the district, the board in a separate proposition may also submit the question of whether the board should be authorized to issue bonds payable in whole or in part from taxes to provide service to the area annexed.

(m) In the event that the district has bonds, notes, or obligations or taxes that may be owed, contracted, or authorized at the time an area is annexed or if the district has voted but unissued bonds payable in whole or in part from taxes at the time of an annexation, the board may provide in its order annexing an area to the district that the annexation will not be complete or final unless the indebtedness, tax or bond, note, or other obligation assumption election results favorably to the assumption of the district's outstanding bonds, notes, or other obligations and voted but unissued bonds.

(n) If the board elects to submit the question of whether the board should be authorized to issue bonds to provide service to the area annexed, the board may also provide in its order annexing an area to the district that the annexation will not be complete unless the election results favorably to the issuance of bonds to serve the annexed area.

(o) Whenever an election is ordered to be held in the district for the purpose of the assumption of bonds, notes, or other obligations or taxes or the assumption of voted but unissued bonds by reason of the annexation of any area, then the election shall be held and notice given as provided for bond elections held by the district.

(p) The district has the same right and duty to furnish service to the annexed land that it previously had to furnish service to other land in the district and the board shall endeavor to serve all land in the district without discrimination.

Sec. 49.303. EXCLUDING LAND FROM DISTRICT. (a) Before a district orders an election for the authorization of bonds payable in whole or in part from taxes, the board may, on its own motion, call a hearing on the question of the exclusion of land from the district under the provisions of this section and Sections 49.304-49.307, if the exclusions are practicable, just, or desirable.

(b) The board must call a hearing on the exclusion of land or other property from the district on the written petition of any landowner or

property owner in the district filed with the secretary of the board before the first election on the question of whether bonds should be issued payable in whole or in part from taxes is ordered.

(c) The board may hold a hearing on the exclusion of land or other property from the district if the district has not issued bonds payable in whole or in part from taxes, and if a landowner or property owner submits a signed petition to the secretary of the board evidencing the consent of the owners of a majority of the acreage proposed to be excluded and a majority of the taxable property in the district, as reflected by the most recent certified tax roll of the district.

(d) A district that has previously held an election at which approval was given for the issuance of bonds payable in whole or in part from taxes may not rely on that election for the issuance of the bonds if after the bond election, but before the bonds are issued, land is excluded from the district as provided by this subchapter. The board must call and hold another bond election and receive voter approval as provided by this subchapter before issuing those bonds.

Sec. 49.304. HEARING TO ANNOUNCE PROPOSED EXCLUSIONS AND TO RECEIVE PETITIONS. (a) If the board determines that an exclusion hearing should be held or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided in Section 49.303, the board shall give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

(b) The board shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 14 days before the day of the hearing.

(c) The notice shall advise all interested property owners of their right to present petitions for exclusions of land or other property and to offer evidence in support of the petitions and their right to contest any proposed exclusion based on either a petition or the board's own conclusions and to offer evidence in support of the contest.

Sec. 49.305. PETITION. (a) A petition for exclusion of land must accurately describe by metes and bounds or lot and block number the land to be excluded. A petition for exclusion of other property must describe the property to be excluded.

(b) A petition for exclusion shall be filed with the district at least seven days before the hearing and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

Sec. 49.306. GROUNDS FOR EXCLUSION. Exclusions from the district may be made on the grounds that:

(1) to retain certain land or other property within the district's taxing power would be arbitrary and unnecessary to conserve the public welfare, would impair or destroy the value of the property desired to be excluded, and would constitute the arbitrary imposition of a confiscatory burden;

(2) to retain any given land or other property in the district and to extend to it, either presently or in the future, the benefits, service, or protection of the district's facilities would create an undue and uneconomical burden on the remainder of the district; or

(3) the land desired to be excluded cannot be bettered as to conditions of living and health, provided with water or sewer service, protected from flood, drained, freed from interruption of traffic caused by excess of water on the roads, highways, or other means of transportation serving the land, or otherwise benefited by the district's proposed improvements.

Sec. 49.307. HEARING AND ORDER EXCLUDING LAND. (a) The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. The board immediately shall specifically describe all property it proposes to exclude on its own motion and shall hear first any protests and evidence against exclusions proposed on the board's own motion.

(b) After considering all engineering data and other evidence presented to it, the board shall determine whether the facts disclose the affirmative of the propositions stated in Subdivision (1) or (2) or, if appropriate, in Subdivision (3) of Section 49.306. If the affirmative exists, the board shall enter an order excluding all land or other property falling within the conditions defined by the respective subdivisions and shall redefine in the order the boundaries of the district to embrace all land not excluded. A copy of the order excluding land and redefining the boundaries of the district shall be filed in the deed records of the county or counties in which the district is situated.

Sec. 49.308. SUIT TO REVIEW EXCLUSION. (a) Any person owning an interest in land affected by the order may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order.

(b) The venue in any action shall be in any district court that has jurisdiction in the county in which the district is located. If the district includes land in more than one county, the venue shall be in the district court having jurisdiction in the county in which the major portion of the acreage of the land sought to be excluded from the district is located.

(c) A person may appeal from the judgment or order of a district court in a suit brought under the provisions of this section to the court of civil appeals and supreme court as in other civil cases in which the district court has original jurisdiction. The appeal is subject to the statutes and rules of practice and procedure in civil cases.

Sec. 49.309. EXCLUSION OF NONIRRIGATED PROPERTY. For the purposes of this section and Sections 49.310-49.314, the following definitions shall apply:

(1) "Nonirrigated property" means land that:

(A) is not irrigable;

(B) the owners of a majority of the acreage of which no longer intend to irrigate; or



(C) has been subdivided into:

(i) town lots, or town lots and blocks, or small parcels of the same general nature as town lots; or

(ii) town blocks and lots designed, intended, or suitable for residential, commercial, or other nonagricultural purposes, as distinguished from farm acreage whether subdivided into a subdivision or not; and

(iii) including streets, alleys, parkways, parks, and railroad property and rights-of-way located in the subdivided land.

The property described in Subdivision (1) shall be considered nonirrigated property regardless of whether the land is within or near a municipality and regardless of whether a plat or map of the subdivision has been duly filed for record and recorded in the office of the county clerk of the county in which the land or any part of the land is situated.

The term does not include land that within the year preceding the date of the hearing under Section 49.310 was used for farming or agricultural purposes.

(2) "District" means a water control and improvement, water improvement, or irrigation district the principal purpose of which is furnishing water for the irrigation of agricultural lands or that is principally engaged in furnishing water for the irrigation of agricultural lands.

Sec. 49.310. AUTHORITY TO EXCLUDE LAND. (a) A petition for exclusion may be filed by the owner or owners, or their authorized agent, of a majority in acreage of nonirrigated property included within the boundaries of a district.

(b) Upon receipt of a petition for exclusion, or upon its own motion, a district shall issue an order excluding the property if, after notice and hearing, the board finds that:

(1) the described property is nonirrigated property;

(2) the applicable requirements of Section 49.311 have been satisfied;

(3) the owner or owners do not object to the exclusion of their nonirrigated property; and

(4) it is in the best interest of the district and of the described property to exclude that property from the district.

(c) The district shall follow the notice and hearing provisions and other procedural requirements for excluding territory applicable to that district as set out in Sections 49.303-49.307.

Sec. 49.311. CONSENT FROM HOLDERS OF INDEBTEDNESS. If the district has outstanding bonded indebtedness, or indebtedness under a loan from a governmental agency, a written consent from an authorized representative of the holder or holders of the indebtedness consenting to the exclusion shall be obtained and filed with the district before the hearing.

Sec. 49.312. RESULTS OF EXCLUSION. (a) Upon issuance of an order excluding property, that property is no longer a part of the district and is not entitled to water service from the district.

(b) Any taxes, assessments, or other charges owed to the district at the time of exclusion remain the obligation of the owner of the excluded property and continue to be secured by statutory liens on the property, if any.

(c) Once excluded, the landowner has no further liability to the district for future taxes, assessments, or other charges of the district.

(d) A copy of the order excluding the property from the district certified and acknowledged by the secretary of the board shall be recorded by the district in the real property records of the county in which the excluded property is located as evidence of the exclusion.

Sec. 49.313. DISTRICT FACILITIES ON EXCLUDED PROPERTY. If any canals, ditches, pipelines, pumps, or other facilities of the district are located on lands excluded by the resolution of the board, the exclusion does not affect or interfere with any rights that the district has to maintain and continue operation of the facilities as located for the purpose of servicing lands remaining in the district.

Sec. 49.314. WATER ALLOCATIONS. (a) After the district adopts an order excluding nonirrigated property, a city or other water supply corporation that serves the excluded land with a potable water supply may petition the district to apply to the commission to convert the proportionate irrigation water allocation of the land excluded as nonirrigated property, as determined by the district, from irrigation use to municipal use allocation.

(b) The district shall make such application to the commission within 30 days of the filing of a petition by the city or water supply corporation that serves the land with a potable water supply, provided the city or other water supply corporation pays the district the amount the district estimates will be its reasonable expenses and attorney's fees incurred in the commission conversion proceedings and enters into an agreement with the district setting forth the basis on which the water allocation shall be delivered, or made available, to the city or water supply corporation covering such terms as the entities may agree to, and in the event the parties cannot agree, such dispute shall not be subject to the jurisdiction of the commission, or its successors, under this code but subject to resolution through alternative dispute resolution. In such commission proceeding, the city or water supply corporation shall provide evidence to the commission of the current or projected need within a five year period for the municipal-use water allocation after such conversion as a condition of such conversion of use of the district's water rights from irrigation use to municipal use.

[Sections 49.315-49.320 reserved for expansion]

#### SUBCHAPTER K. DISSOLUTION

Sec. 49.321. DISSOLUTION AUTHORITY. After notice and hearing, the commission may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

Sec. 49.322. NOTICE OF HEARING. (a) The commission shall give notice of the dissolution hearing that briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Sec. 49.323. INVESTIGATION. The executive director shall investigate the facts and circumstances of the district to be dissolved and the result of the investigation shall be included in a written report.

Sec. 49.324. ORDER OF DISSOLUTION. The commission may enter an order dissolving the district at the conclusion of the hearing if it finds that the district has performed none of the functions for which it was created for a period of five consecutive years before the day of the proceeding and that the district has no outstanding bonded indebtedness.

Sec. 49.325. CERTIFIED COPY OF ORDER. The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the particular district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Sec. 49.326. APPEALS. (a) Appeals from a commission order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

(b) The trial on appeal shall be de novo and the substantial evidence rule shall not apply.

Sec. 49.327. ASSETS ESCHEAT TO STATE. Upon the dissolution of a district by the commission, all assets of the district shall escheat to the State of Texas. The assets shall be administered by the state treasurer and shall be disposed of in the manner provided by Chapter 72, Property Code.

[Sections 49.328-49.350 reserved for expansion]

#### SUBCHAPTER L. FIRE DEPARTMENTS

Sec. 49.351. FIRE DEPARTMENTS. (a) A district providing potable water or sewer service to household users may establish, operate, and maintain a fire department to perform all fire-fighting activities within the district as provided in this subchapter and may issue, with voter approval, bonds for financing the establishment of the fire department including the construction and purchase of necessary buildings, facilities, and equipment and the provision of an adequate water supply.

(b) After approval of the district electors of a plan to operate or jointly operate a fire department, the district or districts shall provide an adequate system and water supply for fire-fighting purposes, may construct and purchase necessary buildings, facilities, and equipment, and may employ all necessary personnel including supervisory personnel to operate the fire department.

(c) Bonds issued for establishment of the fire department shall be authorized and issued, and a district shall be authorized to levy a tax to

pay the principal of and interest on such bonds, as provided by law for authorization and issuance of other bonds of the district.

(d) Two or more districts may contract to operate a joint fire department for their districts and shall include in the contract a system for joint administration and operation of the fire department, the extent of services to be provided, a method for funding the department from funds of each district, and any other terms and conditions the parties consider necessary.

(e) A district may contract with any other person to perform fire-fighting services within the district.

(f) Before a district establishes a fire department, contracts to operate a joint fire department, or contracts with another person to perform fire-fighting services within the district, the district must comply with the provisions of Subsections (g), (h), and (i).

(g) A district or districts proposing to act jointly shall develop a detailed plan for the establishment, operation, and maintenance of the proposed department, including a detailed presentation of all financial requirements. If a district is entering into a contract under Subsection (e), the district shall develop a plan that describes in detail the facilities and equipment to be devoted to service to the district and all proposals for providing the service and that includes a presentation of the financial requirements under the contract. Before adoption of a plan and any contract by the district, the board shall hold a hearing at which any person residing in the district may present testimony for and against the proposed plan and any proposed contract. Notice of the hearing and the place at which the plan and any contract may be examined shall be posted in two public places within the district at least 10 days before the date of the hearing.

(h) After adoption of the plan and any contract by the board, the plan and financial presentation, together with any contract and a written report in a form prescribed by the executive director describing existing fire departments and fire-fighting services available within 25 miles of the boundaries of the district, shall be submitted to the executive director for consideration by the commission under rules adopted by the commission. Before approval or disapproval, the commission shall hold a hearing. Notice of the hearing before the commission shall be posted by the board in at least two public places in the district at least five days before the hearing. Before the commission approves the application, it must find that it is economically feasible for the district to implement the plan and meet the provisions of any contract and shall take into consideration in giving its approval the general financial condition of the district and the economic feasibility of the district carrying out the plan or meeting the obligations of the contract.

(i) After approval by the commission, the district shall submit to the electors of the district at the election to approve bonds for financing the plan, or if no bonds are to be approved, at an election called for approval of the plan, the proposition of whether or not the plan should be implemented or entered into by the district. The ballots at the election

shall be printed, as applicable, to provide for voting for or against the proposition: "The implementation of the plan for (operation/joint operation) of a fire department"; or "The plan and contract to provide fire-fighting services for the district."

(j) No funds of the district may be used to establish a fire department, to enter into joint operation of a fire department, or to contract for fire-fighting services without the approval of a plan by the electors as provided in this section. However, the district may use available funds for preparation of a plan and any contract. The operation of a fire department or provision of fire-fighting services is an essential public necessity, and a district may discontinue any and all services, including water and sewer service, to any person who fails to timely pay fire department service fees or any other assessment adopted by the district to support the fire department or the provision of fire-fighting services.

[Sections 49.352-49.450 reserved for expansion]

#### SUBCHAPTER M. NOTICES, REPORTS, AND BANKRUPTCY

Sec. 49.451. POSTING SIGNS IN THE DISTRICT. (a) A district subject to the notice requirements of Section 49.452 shall, within 30 days after the effective date of this section or the creation of the district, post signs indicating the existence of the district at two principal entrances to the district.

(b) The size and exact location of the information contained on the signs shall be determined by the executive director.

Sec. 49.452. NOTICE TO PURCHASERS. (a)(1) Any person who proposes to sell or convey real property located in a district created under this title or by a special Act of the legislature that is providing or proposing to provide, as the district's principal function, water, sanitary sewer, drainage, and flood control or protection facilities or services, or any of these facilities or services that have been financed or are proposed to be financed with bonds of the district payable in whole or part from taxes of the district, or by imposition of a standby fee, if any, to household or commercial users, other than agricultural, irrigation, or industrial users, and which district includes less than all the territory in at least one county and which, if located within the corporate area of a city, includes less than 75 percent of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part, must first give to the purchaser the written notice provided in this section.

(2) The provisions of this section shall not be applicable to:

(A) transfers of title under any type of lien foreclosure;

(B) transfers of title by deed in cancellation of indebtedness secured by a lien upon the property conveyed; or

(C) transfers of title by reason of a will or probate proceedings.

(b) The prescribed notice for all districts shall be executed by the seller and shall read as follows:

"The real property, described below, that you are about to purchase is located in the \_\_\_\_\_ District. The district has taxing authority separate from any other taxing authority and may, subject to voter

approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is \$ \_\_\_\_\_ on each \$100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of debt service tax, as of this date, is \$ \_\_\_\_\_ on each \$100 of assessed valuation. The total amount of bonds approved by the voters and which have been or may, at this date, be issued is \$ \_\_\_\_\_, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is \$ \_\_\_\_\_

"The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is \$ \_\_\_\_\_. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

"The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
\_\_\_\_\_  
Signature of Seller

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

\_\_\_\_\_  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
\_\_\_\_\_  
Signature of Purchaser

"(Note: Correct district name, tax rate, bond amounts, and legal description are to be placed in the appropriate space.) Except for notices included as an addendum or paragraph of a purchase contract, the notice shall be executed by the seller and purchaser, as indicated. If the district does not propose to provide one or more of the specified facilities and services, the appropriate purpose may be eliminated. If the district has not yet levied taxes, a statement of the district's most recent projected rate of debt service tax is to be placed in the appropriate space. If the district does not have approval from the commission to adopt and impose a standby fee, the second paragraph of the notice may be deleted. For the purposes of the notice form required to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting on the seller's behalf may modify the notice by substitution of the words 'January 1, \_\_\_\_\_' for the words 'this date' and place the correct calendar year in the appropriate space."

(c) The notice required by this section shall be given to the prospective purchaser prior to execution of a binding contract of sale and purchase either separately or as an addendum or paragraph of a purchase contract. In the event a contract of purchase and sale is entered into without the seller providing the notice required by this subsection, the purchaser shall be entitled to terminate the contract. If, however, the seller furnishes the required notice at or prior to closing the purchase and sale contract and the purchaser elects to close even though such notice was not timely furnished prior to execution of the contract, it shall be conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or other remedies or rights under the provisions of this section. Notwithstanding any provision of this subchapter to the contrary, all sellers, title companies, and examining attorneys, and any agent, representative, or person acting on their behalf, shall not be liable for damages under the provisions of either Subsection (l) or (m) or liable for any other damages to any person for failure to provide the notice required by this section to a purchaser prior to execution of a binding contract of a purchase and sale when the district has not filed the information form and map or plat as required under Section 49.455.

(d) The purchaser shall sign the notice or purchase contract including such notice to evidence the receipt of notice.

(e) At the closing of purchase and sale, a separate copy of such notice with current information shall be executed by the seller and purchaser, acknowledged, and thereafter recorded in the deed records of the county in which the property is located. For the purposes of this section, all sellers, title companies, and examining attorneys, and any agent, representative, or person acting on their behalf, shall be entitled to rely on the accuracy of the information form and map or plat as last filed by each district under Section 49.455 or the information contained in or shown on the notice form issued by the district under Section 49.453 in completing the notice form to be executed by the seller and purchaser at the closing of purchase and sale. Any information taken from the information form

or map or plat as last filed by each district and the information contained in or shown on the notice form issued by the district under Section 49.453 shall be, for purposes of this section, conclusively presumed as a matter of law to be correct. All subsequent sellers, purchasers, title insurance companies, examining attorneys, and lienholders shall be entitled to rely upon the information form and map or plat filed by the district or the notice form issued by the district under Section 49.453.

(f) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months shall be considered a sale under Subsection (a).

(g) For the purposes of the notice form to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, a seller and any agent, representative, or person acting in the seller's behalf may modify the notice by substitution of the words "January 1, \_\_\_\_" for the words "this date" and place the correct calendar year in the appropriate space. All sellers, and all persons completing the prescribed notice in the sellers' behalf, shall be entitled to rely on the information contained in or shown on the information form and map or plat filed of record by the district under Section 49.455 in completing the prescribed form to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase. Except as otherwise provided in Subsection (e), any information taken from the information form or map or plat filed of record by the district in effect as of January 1 of each year shall be, for purposes of the notice to be given to the prospective purchaser prior to execution of a binding contract of sale and purchase, conclusively presumed as a matter of law to be correct for the period January 1 through December 31 of such calendar year. A seller and any persons completing the prescribed notice in the seller's behalf may provide more recent information, if available, than the information contained in or shown on the information form and map or plat filed of record by the district under Section 49.455 in effect as of January 1 of each year in completing the prescribed form to be given to the purchaser prior to execution of a binding contract of sale and purchase. Nothing contained in the preceding sentence shall be construed to create an affirmative duty on the part of a seller or any persons completing the prescribed notice in the seller's behalf to provide more recent information than the information taken from the information form and map or plat filed of record by the district as of January 1 of each year in completing the prescribed notice to be given to the purchaser prior to execution of a binding contract of sale and purchase. All subsequent sellers, purchasers, title insurance companies, examining attorneys, and lienholders shall be entitled to rely upon the information form and map or plat filed by the district.

(h) If such notice is given at closing as provided in Subsection (e), a purchaser, or the purchaser's heirs, successors, or assigns, shall not be entitled to maintain any action for damages or maintain any action against a seller, title insurance company, or lienholder, or any agent, representative, or person acting in their behalf, by reason of use by the seller of the



information filed for record by the district or reliance by the seller on the filed plat and filed legal description of the district in determining whether the property to be sold and purchased is within the district. No action may be maintained against any title company for failure to disclose the inclusion of the described real property within a district when the district has not filed for record the information form, map, or plat with the clerk of the county or counties in which the district is located.

(i) Any purchaser who purchases any real property in a district and who thereafter sells or conveys the same shall on closing of such subsequent sale be conclusively considered as having waived any prior right to damages under this section.

(j) It is the express intent of this section that all sellers, title insurance companies, examining attorneys, vendors of property and tax information, real estate brokers, and lienholders, and any agent, representative, or person acting on their behalf, shall be entitled to rely on the accuracy of the information form and map or plat as last filed by each district or the information contained in or shown on the notice form issued by the district under Section 49.453, or for the purposes of the notice to be given the purchaser prior to execution of a binding contract of sale and purchase the information contained in or shown on the information form and map or plat filed of record by the district in effect as of January 1 of each year for the period January 1 through December 31 of such calendar year.

(k) Except as otherwise provided in Subsection (c), if any sale or conveyance of real property within a district is not made in compliance with the provisions of this section, the purchaser may institute a suit for damages under the provisions of either Subsection (l) or (m).

(l) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in the amount of all costs relative to the purchase of the property plus interest and reasonable attorney's fees. The suit for damages may be instituted jointly or severally against the person, firm, corporation, partnership, organization, business trust, estate, trust, association, or other legal entity that sold or conveyed the property to the purchaser. Following the recovery of damages under this subsection, the amount of the damages shall first be paid to satisfy all unpaid obligations on each outstanding lien or liens on the property and the remainder of the damage amount shall be paid to the purchaser. On payment of all damages respectively to the lienholders and purchaser, the purchaser shall reconvey the property to the seller.

(m) A purchaser of real property covered by the provisions of this section, if the sale or conveyance of the property is not made in compliance with this section, may institute a suit for damages in an amount not to exceed \$5,000, plus reasonable attorney's fees.

(n) A purchaser is not entitled to recover damages under both Subsections (l) and (m), and entry of a final decision awarding damages to the purchaser under either Subsection (l) or (m) shall preclude the purchaser from recovering damages under the other subsection.

Notwithstanding any part or provision of the general or special laws or the common law of the state to the contrary, the relief provided under Subsections (l) and (m) shall be the exclusive remedies for a purchaser aggrieved by the seller's failure to comply with the provisions of this section. Any action for damages shall not, however, apply to, affect, alter, or impair the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(o) A suit for damages under the provisions of this section must be brought within 90 days after the purchaser receives the first district tax notice or within four years after the property is sold or conveyed to the purchaser, whichever time occurs first, or the purchaser loses the right to seek damages under this section.

(p) Notwithstanding any provisions of this subchapter to the contrary, a purchaser may not recover damages of any kind under this section if that person:

(1) purchases an equity in real property and in conjunction with the purchase assumes any liens, whether purchase money or otherwise; and

(2) does not require proof of title by abstract, title policy, or any other proof of title.

Sec. 49.453. NOTICE FORM FROM DISTRICT. (a) A district covered by Section 49.452 shall also maintain in the district office the particular form of Notice to Purchasers required by Section 49.452 to be furnished by a seller to a purchaser of real property in that district and shall, upon written request of any person, issue the notice form completed by a district with all information required to be furnished by the district. A notice form issued by a district under the provisions of this section shall include a written statement that the notice form is being issued by the district, the date of its issuance, and the district's telephone number. A district shall not be required to orally provide the information.

(b) A district may charge a reasonable fee as determined by the district not to exceed \$10 for the issuance of a notice form pursuant to Subsection (a). The notice form shall be delivered by regular mail or made available at the district's office. If a district is requested to deliver the notice form to a person by an alternative method, the district may impose a charge not to exceed the actual cost of such delivery.

(c) A district may delegate the responsibility for issuance of the particular form of Notice to Purchasers to an employee or agent of the district. A district shall file with the commission the name, address, and telephone number of the employee or agent of the district responsible for issuance of the notice forms and shall notify the commission in writing within seven days after there is a change to the information required to be filed with the commission under the provisions of this subsection.

(d) Any notice issued by the district shall contain the information effective as of the date of its issuance.

Sec. 49.454. NOTICE OF UNPAID STANDBY FEES. (a) A district covered by Section 49.452 shall, on the written request of any person, issue a certificate stating the amount of any unpaid standby fees, including

interest on the fees, that have been assessed against a tract of property in the district. The district may charge a fee not to exceed \$10 for each certificate. A certificate issued through fraud or collusion is void.

(b) If the district issues a certificate containing an erroneous statement under Subsection (a) and the owner of the property transfers the property to a good faith purchaser for value, the lien on the property provided by Section 49.231(k) is extinguished to the extent of the error.

(c) This section does not affect the liability for any unpaid standby fees of the former owner of the undeveloped property under Section 49.231(k).

Sec. 49.455. FILING INFORMATION. (a) The board covered by the provisions of Section 49.452 of this subchapter shall file with the county clerk in each of the counties in which all or part of the district is located a duly affirmed and acknowledged information form that includes the information required in Subsection (b), and a complete and accurate map or plat showing the boundaries of the district.

(b) The information form filed by a district under this section shall include:

(1) the name of the district;

(2) the complete and accurate legal description of the boundaries of the district;

(3) the most recent rate of district taxes on property located in the district;

(4) the total amount of bonds that have been approved by the voters and which may be issued by the district (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity);

(5) the aggregate initial principal amount of all bonds of the district payable in whole or part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) that have been previously issued and remain outstanding;

(6) whether a standby fee is imposed by the district and, if so, the amount of the standby fee;

(7) the date on which the election to confirm the creation of the district was held if such was required;

(8) a statement of the functions performed or to be performed by the district; and

(9) the particular form of Notice to Purchasers required by Section 49.452 of this subchapter to be furnished by a seller to a purchaser of real property in that district completed by the district with all information required to be furnished by the district.

If a district has not yet levied taxes, a statement to such effect together with the district's most recent projected rate of debt service tax shall be substituted for Subdivisions (3) and (4).

(c) The information form and map or plat required by this section shall be signed by a majority of the members of the board and by each such

officer affirmed and acknowledged before it is filed with the county clerk, and each amendment made to an information form or map shall also be signed by the members of the board and by each such officer affirmed and acknowledged before it is filed with the county clerk.

(d) The information form required by this section shall be filed with the county clerk within 48 hours after the effective date of this section or within 48 hours after the district is officially created, whichever time comes first. For purposes of this section, the words "officially created" mean the date and hour in which the results of the election to confirm the creation of the district are declared.

(e) Within seven days after there is a change in any of the information contained in the district information form, map, or plat, the district shall file an amendment to the information form, map, or plat setting forth the changes made.

(f) Any person who affirms the corrections and accuracy of and acknowledges an information form, map, or plat, or any amendment to an information form, map, or plat that includes information that is inaccurate or incorrect shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each violation.

(g) If a district fails to file the information required by this section in the time required, the executive director may request the state attorney general or the district or county attorney of the county in which the district is located to seek a writ of mandamus to force the board to prepare and file the necessary information.

(h) Any member of a governing board who wilfully fails or refuses to join in filing an information form, map, or plat or an amendment to an information form, map, or plat under this section shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each violation. A member of a governing board is presumed to have wilfully failed or refused to join in the filing of an information form, map, or plat or an amendment to an information form, map, or plat if that member was present at the meeting at which the information included in the information form, map, or plat or amendment to the information form, map, or plat was adopted.

(i) If a district covered by this section is dissolved, annexed to another local government, or consolidated with another district, the members of the board shall file a statement of this fact together with the effective date of the dissolution, annexation, or consolidation with the information form. After a district is dissolved and the statement is filed under this subsection, a person who sells or conveys property within the dissolved district is no longer required to give notice under Section 49.452 of this subchapter.

(j) A copy of all information forms, maps, or plats and amendments to these filed under this section shall also be filed with the executive director.

Sec. 49.456. BANKRUPTCY OF DISTRICTS; AUTHORITY OF COMMISSION. (a) Notwithstanding Section 140.001, Local Government Code, or any other law of this state, a district created under Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas

Constitution, that is subject to the continuing supervision of the commission may not proceed under Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. Sections 901-946) or any other law enacted by the Congress of the United States under federal bankruptcy authority until the commission authorizes the district to proceed under those laws by written order.

(b) A district requesting the commission's authorization to proceed under Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. Sections 901-946) or any other federal bankruptcy law shall file an application with the commission requesting authorization.

(c) The commission shall investigate the financial condition of a district submitting an application under Subsection (b), including its assets, liabilities, and sources of revenues and may require a district to submit any information that the commission considers material to a determination of whether authorization to proceed in bankruptcy should be granted.

(d) The commission may not authorize a district to proceed in bankruptcy unless the commission determines that the district cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debts and other obligations as they mature.

(e) The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section.

SECTION 3. Title 4, Water Code, is amended by adding Chapter 59 to read as follows:

CHAPTER 59. REGIONAL DISTRICTS  
SUBCHAPTER A. DISTRICT CREATION

Sec. 59.001. PURPOSE AND APPLICATION. (a) The purpose of this chapter is to authorize creation and operation of regional districts for water, sanitary sewer, drainage, and municipal solid waste disposal under Section 59, Article XVI, Texas Constitution.

(b) This chapter applies only in counties with a population of at least 2.2 million, according to the most recent federal census, or bordering a county with a population of at least 2.2 million, according to the most recent federal census.

Sec. 59.002. DEFINITIONS. (a) In this chapter:

(1) "District" means a district created or operating under this chapter.

(2) "Municipal district" means a district created under general law or a special Act operating under Chapter 51, 53, or 54.

(3) "Bond" means bonds, coupons, notes, or any other evidence of indebtedness.

(b) Other terms not defined by this chapter have the same meaning assigned to those terms by Section 49.001.

Sec. 59.003. CREATION OF DISTRICT. (a) A district may be created by:

(1) The boards of at least 20 percent of the total number of municipal districts to be included in the proposed district may jointly

petition the commission for creation of a district. The petition must describe the territory to be included in the district and must include resolutions endorsing creation of the district adopted by each municipal district to be included in the district.

(2) The owner or owners of 2,000 or more contiguous acres may petition the commission for creation of a district.

(3) The commissioners courts of one or more counties may petition the commission for creation of a district in any territory within the county.

(4) The governing body of any city may petition the commission for creation of a district in any territory within the city or its extraterritorial jurisdiction.

(b) Petitions for the creation of a district must:

(1) describe the boundaries of the proposed district by metes and bounds that adequately and completely circumscribe the property so that there is complete closure of the property or by lot and block numbers if there is a recorded map or plat or subdivision survey of the area;

(2) state the general nature of the work proposed to be done, the necessity of the work, and the cost of any projects of the district as estimated by those filing the petition;

(3) state the name of each petitioner; and

(4) include a name of the district generally descriptive of the locale of the district followed by the words "Regional District."

(c) A proposed district may not have the same name as any other district in the state.

(d) Section 54.013 applies to the composition of districts created under this chapter.

Sec. 59.004. PURPOSES OF DISTRICT. A district shall be created:

(1) to purchase, own, hold, lease, and otherwise acquire sources of water supply;

(2) to build, operate, and maintain facilities for the transportation of water;

(3) to sell water to cities, to political subdivisions of this state, to water supply corporations, to private business entities, and to individuals;

(4) to purchase, own, hold, lease, and otherwise acquire equipment and mechanisms necessary for sanitary sewer and wastewater treatment;

(5) to build, operate, and maintain facilities for sanitary sewer and wastewater treatment;

(6) to transport and treat sanitary sewer and wastewater effluent of cities and political subdivisions of this state and for private business entities or individuals;

(7) to purchase, own, hold, lease, and otherwise acquire equipment and mechanisms for the drainage of storm water and floodwater; and

(8) for the purposes outlined in Section 54.012.

Sec. 59.005. MATCHING FUNDS GUARANTEES. If the Texas Water Development Board requires that matching funds be provided as a condition for receiving a loan or grant from the Texas Water Development Board from research and planning funds, the matching funds may not be

provided through a guarantee of matching funds by any individual who has a financial interest in the regional district or who will receive any direct financial benefit from a regional district project.

Sec. 59.006. CONSENT OF CITY. (a) Land in the corporate limits of a city or in the extraterritorial jurisdiction of a city may not be included in a district unless the city grants its written consent by resolution or ordinance to the inclusion of the land in the district.

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land in its extraterritorial jurisdiction in a district within 120 days after receipt of a written request, the person or entity desiring to create the district may petition the governing body of the city to make available the water, sewer, or drainage service contemplated to be provided by the district.

(c) Failure of the governing body of the city and the requesting district to execute a mutually agreeable contract providing for the service requested within six months after receipt of a request for consent constitutes authorization for the inclusion of land in the district under this section. Authorization for the inclusion of the land in the district under this section means only authorization to initiate proceedings to include the land in the district as otherwise provided by this chapter.

(d) Sections 54.016(e), (f), (g), and (h) apply under this chapter.

Sec. 59.007. GRANTING OR REFUSING PETITION; EXCLUSION OF TERRITORY. (a) If after the hearing of the petition the commission finds that the petition conforms to the requirements of this chapter and that the creation of the district would be of benefit to the territory to be included in the district, the commission shall issue an order granting the petition for creation. If the commission finds that part of the territory included in the proposed district will not benefit from the creation of the district, the commission shall exclude that territory from the proposed district and redefine the proposed district's boundaries accordingly.

(b) If the commission finds that the petition does not conform to the requirements of this chapter or that the proposed projects are not of benefit to the territory in the proposed district, the commission shall issue an order either denying the petition or requiring petitioners to amend their petition.

(c) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is to be located that has requested notice of hearings as provided by Section 54.019.

[Sections 59.008-59.020 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 59.021. DIRECTORS. (a) The commission shall appoint temporary directors who shall serve until permanent directors are elected.

(b) A petition requesting creation filed in accordance with Section 59.006 may provide that directors be elected by precinct as provided by Subsection (h).

(c) The board of directors is composed of five members unless the petition requesting creation of the district requests and the commission approves a board that consists of seven members.

(d) Permanent directors shall be elected in accordance with Chapter 49.

(e) If the petition for creation has requested the election of seven directors as provided by Subsection (c), unless otherwise agreed, the three directors elected who received the fewest number of votes, whether their election is by precinct or at large, shall serve until the next directors election following the confirmation election and the four who received the highest number of votes shall serve until the second directors election after the confirmation election.

(f) After the creation of the district, the persons or entities that petitioned for creation or 50 qualified voters of the district may file a petition with the commission requesting to expand the district's board to seven members. If the commission grants the petition, the commission shall appoint two temporary directors. One temporary director shall serve until the next directors election and one shall serve until the next succeeding directors election. At each election one director shall be elected to serve for a four-year term.

(g) If the board of directors of the district is expanded to seven members, four directors shall constitute a quorum and a concurrence of four directors is necessary in all matters pertaining to the business of the district.

(h) A petition for the creation of a district may request that the board be elected to represent a geographic area. If the petition requesting creation of the district is granted, the commission shall establish precincts from which the directors are to be elected. In establishing the precincts the commission shall attempt to have directors represent geographic areas with equal numbers of people and shall comply with the federal Voting Rights Act of 1965 (42 U.S.C. Sections 1971, 1973 et seq.). Thereafter, the board of directors of the district shall revise the precincts from time to time to cause them to comply with the provisions of this subsection.

Sec. 59.022. ABILITY TO SET RATES. The district may charge rates to persons and entities located outside the district's boundaries on terms, rates, and charges the board of directors may determine to be advisable. In setting rates for out-of-district customers, the board shall set rates sufficient to enable it to meet operation and maintenance expenses and to pay the principal of and interest on debt issued in connection with providing service and to provide a reasonable reserve for replacements to the district. In setting rates, the district may take into consideration past operation and debt service expenses.

Sec. 59.023. ISSUANCE OF BONDS. The district may issue bonds for the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes of the district, including works, improvements, facilities, plants, equipment, and appliances needed to provide a waterworks system, sanitary sewer system, storm sewer system, solid waste disposal system, and parks and recreational facilities. Prior to issuing bonds or other obligations, a



confirmation election must be held in accordance with Chapter 49, and a majority of voters must approve the establishment of the district.

Sec. 59.024. EXCLUSION OF CERTAIN MUNICIPAL DISTRICTS.

(a) A municipal district may be excluded from the district as provided by this section.

(b) To be excluded, the board of directors of the municipal district may adopt a resolution requesting exclusion by a majority vote of its board of directors and shall file the petition with the directors of the proposed district before the first confirmation election.

(c) At the time of the district's confirmation election, a separate voting precinct shall be used for the qualified voters in each municipal district that has filed a petition requesting exclusion. The votes in each precinct shall be tallied separately to determine whether that municipal district will be excluded from the district boundaries.

(d) If a majority of the votes cast in a municipal district requesting exclusion vote against confirmation of the district, the votes cast in the confirmation election shall not be counted for the confirmation election, bond election, or maintenance tax election, and that municipal district must be excluded from the boundaries of the district by the board of directors of the district at the time the results of the election are canvassed.

(e) After a confirmation election at which the district is authorized to be created, the board of directors of the district shall adopt an order redefining the boundaries of the district to exclude those municipal districts petitioning for exclusion that have voted not to confirm creation of the district.

(f) Before the creation hearing, any municipal district located within the proposed district may petition the commission for a separate voting precinct to be used within the boundaries of the petitioning district at the time of the district's confirmation election. If the commission grants the petition requesting a separate voting precinct, Subsections (c) through (e) apply.

Sec. 59.025. CONFIRMATION ELECTION. (a) Before a district may be created pursuant to a petition granted by the commission, a confirmation election must be held within the boundaries of the proposed district.

(b) The directors appointed by the commission shall call and hold the confirmation election in the manner provided for conducting elections under Chapter 49. The provisions of those sections relating to a directors election do not apply to an election held under this section.

(c) If the creation of the district is defeated, subsequent confirmation elections may not be held to confirm the creation of the district.

(d) A bond election, maintenance tax election, and any other election may be held at the same time and in conjunction with a confirmation election.

[Sections 59.026-59.050 reserved for expansion]

SUBCHAPTER C. ADDING OR EXCLUDING  
TERRITORY; DISSOLUTION

Sec. 59.051. ADDING LAND BY PETITION OF LESS THAN ALL  
LANDOWNERS. In addition to the method of adding land to a district

described in Section 59.052, defined areas of land, regardless of whether they are contiguous to the district, may be annexed to the district in the manner provided in Chapter 49.

Sec. 59.052. FILING OF PETITION. A petition requesting the annexation of a defined area that is signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the county or counties in which that area is located, that is signed by 50 landowners if the number of landowners is more than 50, that is signed by the single landowner of 2,000 or more acres of land in the area, or that is signed by a majority of the governing body of a municipal district, a county, or a city requesting annexation shall be filed with the secretary of the board.

Sec. 59.053. DISSOLUTION OF DISTRICT BEFORE ISSUANCE OF BONDS. (a) If the board considers it advisable before the issuance of any bonds, the board may dissolve the district and liquidate the affairs of the district as provided by Sections 54.734 through 54.738.

(b) If a majority of the board finds at any time before the authorization of bonds that the proposed district and its proposed activities are for any reason impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

Sec. 59.054. JUDICIAL REVIEW OF BOARD'S ORDER. The board's order to dissolve the district may be judicially reviewed as provided in Chapter 49.

[Sections 59.055-59.070 reserved for expansion]

#### SUBCHAPTER D. MISCELLANEOUS

Sec. 59.071. ANNEXATION OR INCORPORATION BY CITY. (a) If a city annexes all or any part of the territory within a district, or incorporates all or any part of any territory within a district, the city shall succeed to the powers, duties, assets, and obligations of the district as provided by this chapter.

(b) On annexation of any part of the territory of a district by a city or incorporation by a city of any part of the territory of a district, the city shall assume a pro rata share of all debt of the district payable in whole or in part by ad valorem taxes incurred for water, sewer, or drainage purposes or any combination of the three purposes. The percentage of the assumption shall be determined by multiplying the total debt of the district payable in whole or in part from taxes incurred for the stated purposes by a fraction, the numerator of which is the assessed value of the property to be annexed or incorporated based on the most recent certified county property tax rolls at the time of annexation or incorporation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation or incorporation.

(c) After annexation by a city of a portion of the territory of a district or incorporation over any part of the territory of a district, the district may not levy taxes on that territory, and the territory is no longer considered a part of the district for any purpose.

(d) If any district's debt payable in whole or in part from ad valorem taxes is assumed by a city, the governing body of the city shall levy and cause to be collected taxes on all taxable property within the city or provide other funds sufficient to pay the city's pro rata share of the principal of and interest on that debt as it becomes due and payable.

(e) If a city annexes or incorporates the entire territory of the district, the district shall be dissolved in accordance with Sections 43.074, 43.075, and 43.081, Local Government Code, if the district is located in one city or Sections 43.076-43.079, Local Government Code, if the district is located in more than one city.

(f) Section 43.071, Local Government Code, does not apply to the annexation of a district created pursuant to this chapter.

Sec. 59.072. OTHER LAWS. (a) This chapter prevails over any other law in conflict with or inconsistent with this chapter.

(b) Except as specifically provided by this chapter, Chapter 49 and Sections 54.018, 54.019(a), (b), (c), and (d), 54.020, 54.021, 54.023, 54.024, 54.201, 54.205, 54.207-54.208, 54.502-54.505, 54.507(b) and (c), 54.510-54.512, 54.514, 54.515, 54.518, 54.520, 54.521, 54.601-54.604, and 54.735-54.737 apply under this chapter.

(c) Section 54.019(e) does not apply to a district governed by this chapter.

SECTION 4. Section 51.0711(a), Water Code, is amended to read as follows:

(a) The governing body of a municipality that enters a contract or agreement with a district located in more than one county to jointly construct, acquire, operate, or maintain a regional wastewater system is entitled to appoint a special director to the board of the district. Section 51.072 ~~[of this code]~~ does not apply to a special director.

SECTION 5. Section 51.072, Water Code, is amended to read as follows:

Sec. 51.072. QUALIFICATIONS FOR DIRECTOR. To be qualified for election as a director, a person must be a resident of the state, own land subject to taxation in the district, and be at least 18 ~~[21]~~ years of age. Section 49.052 does not apply to a district governed by this chapter whose principal purpose is providing water for irrigation.

SECTION 6. Section 51.076(a), Water Code, is amended to read as follows:

(a) In a district created after June 18, 1967, with boundaries coterminous with the boundaries of a county, the commissioners court may provide in the order granting the petition for creation that the directors are to be selected either as provided in Section 49.102 ~~[51.073 of this code]~~ or by the "commissioners precinct method," which provides for the election of two directors from each commissioners precinct in the county and the election of one director from the county at large.

SECTION 7. Section 51.750(d), Water Code, is amended to read as follows:

(d) The temporary directors of each of the resulting districts must qualify as directors of the district pursuant to Section ~~[Sections]~~ 51.072

~~[and 51.073 of this code]~~ within the period of 90 days after the election approving the division of the original district and shall assume their offices at the expiration of the 90-day period.

SECTION 8. Section 52.005, Water Code, is amended by adding Subsection (c) to read as follows:

~~(c) Sections 49.052, 49.216, and 49.301-49.308 do not apply to districts governed by this chapter.~~

SECTION 9. Section 52.115, Water Code, is amended to read as follows:

Sec. 52.115. MEETINGS. ~~[(a)]~~ The board shall hold regular quarterly meetings. It may hold meetings at other times as required for the business of the district.

~~[(b) Any person may attend a meeting of the board and may present in an orderly manner matters for the board's consideration.~~

~~[(c) Meetings shall be conducted and notice of meetings shall be posted in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).]~~

SECTION 10. Sections 52.294(c), (d), and (e), Water Code, are amended to read as follows:

~~(c) [Notice of an election must be given as provided by Section 52.059(c) of this code for creation elections.~~

~~[(d)]~~ At an election to authorize bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)." At any election to authorize bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

~~(d) [(e)]~~ The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds or notes, the bonds or notes may be issued by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds or notes, the bonds or notes may not be issued.

SECTION 11. Section 53.040, Water Code, is amended to read as follows:

Sec. 53.040. ELECTED SUPERVISORS TAKE OFFICE. If the election results in a division of the district, the five candidates receiving the most votes in each new district shall be declared elected. They shall immediately qualify in accordance with Section 49.055 ~~[by taking the constitutional oath of office and shall file the oath with the county clerk].~~

SECTION 12. Section 53.042, Water Code, is amended to read as follows:

Sec. 53.042. NEWLY ELECTED SUPERVISORS—TERM OF OFFICE. The newly elected supervisors hold office until the new district's next supervisors election ~~[first general election and then until their successors are elected and have qualified].~~

SECTION 13. Section 53.062, Water Code, is amended to read as follows:

Sec. 53.062. BOARD OF SUPERVISORS. A district created under this chapter is governed by a board of five elected supervisors. ~~[Specific provisions for the election of supervisors are found in Section 53.021, Section 53.086, and Section 53.0861 of this code.]~~

SECTION 14. Section 53.088, Water Code, is amended to read as follows:

Sec. 53.088. STATUS OF THE DISTRICT. ~~[(a)]~~ A district is:

- (1) a governmental agency;
- (2) a body politic and corporate; and
- (3) a defined district within the meaning of Article XVI, Section 59, of the Texas Constitution.

~~[(b) A district may, through its board, sue and be sued in any court of this state in the name of the district. All courts of this state shall take judicial notice of the creation of a district. A district shall contract and be contracted with in the name of the district.]~~

SECTION 15. Section 53.172, Water Code, is amended to read as follows:

Sec. 53.172. ORDERING BOND ELECTION. After the creation of a district and the qualification of the supervisors, the board may order an election in the district to authorize a bond issue. ~~[The board shall set the day for the election, which must be held during the period beginning on the 20th day and ending with the 30th day after the day of the order.]~~ At this election, the board shall submit only a proposition authorizing the issuance of bonds and the levy of a tax to pay the bonds. The ballots shall be printed to allow for voting for or against the proposition: "The issuance of bonds and the levy of taxes to pay the bonds."

SECTION 16. Section 54.025, Water Code, is amended to read as follows:

Sec. 54.025. QUALIFICATION OF TEMPORARY DIRECTORS. After a district has been organized, each temporary director shall execute a ~~his~~ bond in accordance with the provisions of Section 49.055 ~~54.116 of this code~~ and shall take the ~~his~~ oath of office, and the board shall meet and organize.

SECTION 17. Section 54.036, Water Code, is amended to read as follows:

Sec. 54.036. DIRECTORS TO CONTINUE SERVING. The existing board of a district converted to a municipal utility district under the provisions of this chapter shall continue to serve as the board of the converted district ~~[until the first Saturday in April following conversion of the district, at which time five directors shall be elected to serve for such period of time and in the same manner as provided in Section 54.029 of this code for directors first elected for a district].~~

SECTION 18. Section 54.203, Water Code, is amended to read as follows:

Sec. 54.203. MUNICIPAL SOLID WASTE. A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve,

extend, or establish a municipal solid waste collection and disposal system, including recycling, inside and outside the district and make proper charges for it. A district may require use of such services as a condition for receiving other district services. A district may enter into an exclusive contract with a private entity to provide such services to all land and persons within its boundaries.

SECTION 19. Section 54.729(a), Water Code, is amended to read as follows:

(a) After the board of each district has agreed on the terms and conditions of consolidation, which may include the assumption by each district of the ~~[other district's]~~ bonds, notes, or other obligations and voted but unissued bonds of the other consolidating districts payable in whole or in part from taxation, the levy of taxes to pay for the bonds, and adoption of a name for the consolidated district, the board shall order an election in each district to determine whether the districts should be consolidated.

SECTION 20. Section 54.730(a), Water Code, is amended to read as follows:

(a) After two or more districts are consolidated, they become one district and are governed as one district, except for the payment of debts created before consolidation if the conditions of consolidation do not provide for the assumption by each district of the ~~[other's]~~ bonds, notes, or other obligations and voted but unissued bonds of the other consolidating districts.

SECTION 21. Section 54.732, Water Code, is amended to read as follows:

Sec. 54.732. ASSESSMENT AND COLLECTION OF TAXES. After consolidation, the district shall assess and collect taxes on property in the original districts to pay debts created by the original districts unless each district has assumed the ~~[other district's]~~ bonds, notes, or other indebtedness payable in whole or in part from taxation of the other consolidating districts.

SECTION 22. Section 54.733, Water Code, is amended to read as follows:

Sec. 54.733. VOTED BUT UNISSUED BONDS. In the event any consolidating ~~[either]~~ district has voted but unissued bonds payable in whole or in part from taxation and the consolidated district assumed the voted but unissued bonds and the consolidated district was authorized to levy taxes to pay for the bonds, then the consolidated district shall be authorized to issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

SECTION 23. Chapter 54, Water Code, is amended by adding Sections 54.739-54.747 to read as follows:

Sec. 54.739. SUBSTITUTING LAND OF EQUAL ACREAGE AND VALUE. After the district is organized and acquires facilities with which to function for the purposes for which it was organized, and votes, issues and sells bonds for such purposes, land within the district boundaries

subject to taxation that does not need or utilize the services of the district may be excluded and other land not within the boundaries of the district may be included within the boundaries of the district as provided by the provisions of this section and Sections 54.741-54.748 subject to commission approval.

Sec. 54.740. REQUISITES FOR APPLICATION FOR EXCLUSION. An owner of land in the district not receiving services from the district may apply for its exclusion from the district boundaries if all taxes levied and assessed by the district on the land to be excluded have been fully paid. The application shall set forth facts concerning the land proposed for exclusion, including evidence of the reasonable market value of the land, and state that the other requisites for the exclusion of the land and substitution of other land have been fulfilled or will be fulfilled at the hearing upon the application. The application shall be verified and acknowledged in a recordable form as conveyances of real property.

Sec. 54.741. INCLUSION OF SUBSTITUTE LAND REQUIRED. An application for exclusion can only be considered by the board if an application is filed by an owner of other land lying outside the boundaries of the district seeking inclusion of land that can be served in a practical manner by the district of at least equal value to the land proposed for exclusion. Such land must be included within the district boundaries and taxing jurisdiction of the district simultaneously with the exclusion of the land proposed for exclusion. Such included land must be of sufficient acreage to avoid an impairment of the security for payment of voted and issued bonds and any other contract obligations payable or secured, in whole or in part, from ad valorem taxes or revenues of the district.

Sec. 54.742. APPLICATION FOR INCLUSION. The application submitted by an owner of land proposed for inclusion shall set forth that the owner of the new land assumes the payment of all taxes, assessments and fees levied on the land and assessed by the district after the date the land is included in the district. The application shall also set forth an agreement by the owner of the land proposed for inclusion that the land will be subject to future taxes for bond tax and other assessments and fees levied and assessed by the district and be subject to the same liens and provisions and statutes governing all other lands in the district as though the land had been incorporated originally in the district. The application for inclusion shall be verified and acknowledged in a recordable form as conveyances of real property.

Sec. 54.743. NOTICE OF HEARING AND HEARING PROCEDURES. The board shall give notice of the hearing on the applications for exclusion and inclusion in conformity with the notice and hearing requirements otherwise applicable to exclusions or additions of land. The board at such hearing shall hear all interested parties and all evidence in connection with the applications.

Sec. 54.744. IMPAIRMENT OF SECURITY. For purposes of the board's consideration of the applications, the lands proposed for inclusion shall be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if:

(1) according to the county tax rolls, the taxable value of such included lands equals or exceeds the taxable value of the excluded lands;

(2) the estimated costs of providing district facilities and services to such included lands is equal to or less than the estimated costs of providing district facilities and services to the excluded lands; and

(3) the district's outstanding bonds or contract obligations are payable in whole or in part by a pledge of net revenues from the ownership or operation of the district's facilities, and the projected net revenues to be derived from the lands to be included during the succeeding 12-month period, as determined by the district's engineer, equals or exceeds the projected net revenues that would otherwise have been derived from the lands to be excluded during the same period.

Sec. 54.745. BOARD'S RESOLUTION TO SUBSTITUTE. If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist and that it is in the best interest of the district to grant such applications, it may adopt and enter in its minutes a resolution and order excluding all or part of the land proposed for exclusion and including all or part of the land proposed for inclusion. Prior to the effective date of the exclusion and inclusion of lands, the district shall have received payment of all fees, charges, assessments, taxes, together with any associated penalties and interest due or overdue in respect to the lands excluded, and if no ad valorem taxes or fees have yet been established by the district for the current year, an amount determined by the district to equal the estimated ad valorem taxes and standby fees to be established by the district for the current year, prorated to the date of exclusion with respect to such excluded lands, shall also be paid.

Sec. 54.746. LIABILITY OF EXCLUDED AND INCLUDED LAND. The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the district. Land included in the district is subject to all laws, liens, and provisions governing the district and the land in the district.

Sec. 54.747. SERVICE TO INCLUDED LAND. The district has the same right and obligation to furnish services to the included land that it previously had to furnish to the excluded land.

SECTION 24. Section 55.101, Water Code, is amended to read as follows:

Sec. 55.101. BOARD OF DIRECTORS. The governing body of a district is a [the] board of five directors.

SECTION 25. Section 55.102, Water Code, is amended to read as follows:

Sec. 55.102. QUALIFICATIONS OF DIRECTORS. To be qualified for election as a director, a person must be a resident of the state, own land subject to taxation in the district, and be at least 18 ~~[more than 21]~~ years of age at the time of the election. Section 49.052 does not apply to a district governed by this chapter whose principal purpose is providing water for irrigation.

SECTION 26. Section 55.721, Water Code, is amended to read as follows:



Sec. 55.721. EXCLUSION OF NONAGRICULTURAL AND NONIRRIGABLE LAND FROM DISTRICT. Land located in the district which is classified as nonagricultural and nonirrigable may be excluded from the district in the manner provided in Subchapter J, Chapter 49 [Sections 51.702-51.713 of this code].

SECTION 27. Section 56.064, Water Code, is amended to read as follows:

Sec. 56.064. ELECTION OF DIRECTORS. (a) On petition of a majority of the real property taxpayers of a district requesting an election of district directors, the commissioners court shall immediately order an election to be held at the earliest legal time. The election shall be held as other elections under Chapter 49 [this chapter].

(b) ~~[The commissioners court shall declare the three persons receiving the highest number of votes elected, and if two or more persons tie for the third highest vote, the commissioners court shall elect the third director from those tying for the place.~~

~~[(c) On qualifying for office, directors elected under this section are the legal and rightful directors of the district within the full meaning and purpose of this law.~~

~~[(d) The first elected directors of the district hold office until the next regular directors' election, and subsequent directors of the district are elected every four years except as provided by Subsection (c) of this section.~~

~~[(e)]~~ The first elected directors of the districts in Calhoun, Matagorda, and Victoria Counties hold office until May 15 of the next succeeding odd-numbered year. Subsequent directors of the district are elected every two years on the first Saturday in May in each odd-numbered year, for a term of two years beginning on May 15 following the election.

SECTION 28. Section 57.053, Water Code, is amended to read as follows:

Sec. 57.053. TERM OF OFFICE, REMOVAL, AND SUCCESSION.

(a) ~~[Each director shall hold office for a period of two years and until his successor is appointed and has qualified.~~

~~[(b)]~~ A vacancy on the board shall be filled by majority vote of the commissioners court ~~[of jurisdiction]~~, and the court shall appoint directors so that the board will always have full membership.

(b) ~~[(c)]~~ The commissioners court ~~[of jurisdiction]~~, by majority vote, may remove an appointed ~~[a]~~ member of the board.

SECTION 29. Section 57.060, Water Code, is amended to read as follows:

Sec. 57.060. PETITION. Before an election is held under Section 57.057 ~~[of this code]~~, a petition, signed by at least 100 ~~[25]~~ electors in the district ~~[each county commissioners precinct]~~ who are qualified to vote ~~[at an election for directors if a countywide election, or by 50 electors if less than countywide]~~, shall be presented to the district ~~[county judge]~~ requesting that an election be held in the district to determine whether or not directors for the district should be elected and,

if so, to elect directors to serve until the next regular director election [for state and county officers]. The petition shall include the name of one or more nominees for each director's position.

SECTION 30. Section 57.061, Water Code, is amended to read as follows:

Sec. 57.061. PROCEDURE FOR ELECTION. [(a)] After the petition is presented under Section 57.060 [of this code], the board [county judge] shall order an election [to determine the propositions presented in the petition. The election shall be held not less than 30 days from the date of the order calling the election, or the propositions may be determined at a general election].

[(b)] The election order shall designate the polling places which shall be the same as the polling places used in the last general election in the county, if a countywide election is held.

[(c)] The county clerk shall issue notice of the election and shall have the notice published in a newspaper of general circulation in the county once a week for two consecutive weeks. The first publication must be not less than 14 days before the day of the election.

[(d)] The sheriff shall post a copy of the notice at least 20 days before the day of the election at each polling place designated in the election order.

[(e)] The district shall pay all expenses incident to calling and holding the election.]

SECTION 31. Section 57.207, Water Code, is amended to read as follows:

Sec. 57.207. DECLARING RESULT OF ELECTION. [(a)] Immediately after an election under this chapter, the officials holding the election shall return the result to the commissioners court of jurisdiction.

[(b)] The election officials shall return the ballot boxes to the clerk of the commissioners court of jurisdiction, who shall safely keep the boxes and deliver them with the returns of the election to the commissioners court of jurisdiction at its next regular or special session.

[(c)] The commissioners court of jurisdiction at its first session after the election shall canvass the vote and the returns. If the proposition submitted has been approved by a majority of the electors of the district voting at the election, the commissioners court of jurisdiction shall declare the result in favor of the proposition, but if the proposition is not approved by the electors of the district, the commissioners court of jurisdiction shall declare the result to be against the proposition.

[(d)] The board [commissioners court of jurisdiction] shall enter an order declaring the election result in its minutes.

SECTION 32. Section 58.072, Water Code, is amended to read as follows:

Sec. 58.072. QUALIFICATIONS. To be qualified for election as a director, a person must be a resident of the state, be the owner of record of fee simple title to land in the district, [and] be at least 18 years of age, and owe no delinquent taxes or assessments to the district. Section 49.052 does not apply to a district governed by this chapter.

SECTION 33. Subchapter A, Chapter 60, Water Code, is amended by adding Section 60.002 to read as follows:

Sec. 60.002. AUDIT. Subchapter G, Chapter 49, related to Audit of Districts, shall apply to districts governed by this chapter.

SECTION 34. Subchapter M, Chapter 60, Water Code, is amended by adding Section 60.350 to read as follows:

Sec. 60.350. BONDS. Section 49.181, related to the Authority of Commission Over Issuance of District Bonds, and Section 49.183, related to Bond Sales, shall apply to bonds supported by taxes and issued by districts governed by this chapter.

SECTION 35. Section 65.103, Water Code, is amended to read as follows:

Sec. 65.103. ELECTION OF DIRECTORS; TERMS OF OFFICE. (a) The persons receiving the highest number of votes at each election shall serve as directors of the district.

(b) The terms of the directors may run concurrently, or may be staggered, but in any event, the term of office of a director may not exceed three years.

(c) The method for determining the initial terms for each of the directors constituting the initial board shall be determined by the temporary directors, and the terms must be clearly stated on the ballot for the confirmation and directors' election. At subsequent elections in each following year in which there is an election, the election must be held on the same uniform election date as the confirmation and directors' election, and the terms of the directors being elected must be stated on the ballot.

~~[(d) The election of directors must be held in a district on one of the dates provided by Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code):~~

~~[(e) The permanent directors may assign a position number to each director's office, and each director subsequently shall be elected by position and not at large.]~~

SECTION 36. Chapter 65, Water Code, is amended by adding Section 65.235 to read as follows:

Sec. 65.235. PROHIBITION ON ASSESSMENT OR COLLECTION OF TAXES. Section 49.107 does not apply to a district created under this chapter.

SECTION 37. Section 66.101, Water Code, is amended to read as follows:

Sec. 66.101. BOARD OF DIRECTORS. A district shall be governed by a board of directors composed of five members, who are elected as provided in Chapter 49 ~~[by this chapter]~~.

SECTION 38. Section 66.310(b), Water Code, is amended to read as follows:

(b) Bonds issued by a district and projects and improvements of the district that are provided through the issuance of bonds are governed by Chapter 49 ~~[Sections 54.516 and 54.517 of this code]~~.

SECTION 39. Chapter 50, Water Code, is repealed, except that Subchapter H is continued in effect for the sole purpose of the

administration and operation of contracts created or issued under those laws.

SECTION 40. The following sections of Chapter 51, Water Code, are repealed: Sections 51.033, 51.034, 51.073-51.074, 51.077-51.084, 51.0851, 51.087-51.089, 51.091-51.101, 51.122-51.124, 51.126, 51.131, 51.132, 51.136-51.138, 51.140-51.146, 51.149, 51.183, 51.191-51.193, 51.221-51.224, 51.231-51.279, 51.354-51.363, 51.371-51.374, 51.412, 51.416-51.418, 51.421, 51.422, 51.4321, 51.4371, 51.691-51.701, 51.714-51.731, and 51.737-51.747.

SECTION 41. The following sections of Chapter 52, Water Code, are repealed: Sections 52.104, 52.107-52.114, 52.116-52.118, 52.119-52.121, 52.157, 52.251-52.253, 52.259-52.262, and 52.297.

SECTION 42. The following sections of Chapter 53, Water Code, are repealed: Sections 53.020, 53.022, 53.023, 53.025-53.028, 53.035-53.039, 53.064, 53.065, 53.067-53.070, 53.0721, 53.076, 53.077, 53.084-53.087, 53.089, 53.090, 53.105, 53.106, 53.108-53.111, 53.114, 53.117-53.120, 53.123-53.125, 53.141-53.144, 53.147, 53.148, 53.173-53.175, 53.1791, 53.197, 53.198, and 53.231-53.273.

SECTION 43. The following sections of Chapter 54, Water Code, are repealed: Sections 54.026-54.029, 54.103-54.126, 54.202, 54.204, 54.209-54.233, 54.301-54.312, 54.506, 54.507(a), 54.509, 54.5121, 54.513, 54.516, 54.517, 54.519, 54.701-54.727.

SECTION 44. The following sections of Chapter 55, Water Code, are repealed: Sections 55.030, 55.033-55.036, 55.052, 55.104-55.106, 55.109, 55.111-55.116, 55.118-55.128, 55.162, 55.164, 55.168-55.184, 55.189-55.191, 55.199, 55.203, 55.252, 55.291-55.304, 55.331, 55.423-55.430, 55.451, 55.453, 55.492-55.496, 55.503, 55.506, 55.711-55.720, and 55.722-55.749.

SECTION 45. The following sections of Chapter 56, Water Code, are repealed: Sections 56.027-56.031, 56.062, 56.063, 56.065-56.068, 56.076-56.081, 56.083, 56.113, 56.114, 56.119, 56.129-56.134, 56.136, 56.138, 56.139, 56.183, 56.184, 56.2045, and 56.714-56.725.

SECTION 46. The following sections of Chapter 57, Water Code, are repealed: Sections 57.052, 57.054-57.056, 57.062-57.070, 57.095-57.099, 57.106, 57.107, 57.109, 57.110, 57.112-57.115, 57.119, 57.120, 57.171-57.174, 57.178, 57.202-57.206, 57.2075, 57.209-57.211, and 57.276-57.278.

SECTION 47. The following sections of Chapter 58, Water Code, are repealed: Sections 58.033, 58.034, 58.073, 58.074-58.083, 58.085-58.088, 58.090-58.100, 58.123, 58.124, 58.131, 58.132, 58.135, 58.139-58.149, 58.151, 58.152, 58.169, 58.179, 58.187-58.189, 58.221-58.224, 58.261, 58.317, 58.354-58.362, 58.442, 58.451, 58.452, 58.601, 58.691-58.701, and 58.714-58.725.

SECTION 48. The following sections of Chapter 65, Water Code, are repealed: Sections 65.024-65.029, 65.104-65.122, 65.202, 65.204, 65.209-65.234, 65.301, 65.401-65.409, 65.509, 65.512, 65.514, and 65.701-65.722.

SECTION 49. The following sections of Chapter 66, Water Code, are repealed: Sections 66.022-66.029, 66.103-66.117, 66.119, 66.120, 66.203-66.205, 66.208-66.215, 66.301, 66.302, 66.305-66.309, 66.312, and 66.323.

SECTION 50. (a) This Act takes effect as provided by this section.

(b) Section 49.103(b), Water Code, shall govern all elections held after December 31, 1995. Directors elected at any election held between January 1, 1992, and April 30, 1992, shall serve until the January 1996 election. Directors elected at any election held between May 1, 1992, and December 31, 1992, shall serve until the May 1996 election. Directors elected at any election held between January 1, 1993, and April 30, 1993, shall serve until the January 1996 election. Directors elected at any election held between May 1, 1993, and July 31, 1993, shall serve until the May 1996 election. Directors elected at any election held between August 1, 1993, and December 31, 1993, shall serve until the May 1998 election. Directors elected at any election held between January 1, 1994, and April 30, 1994, shall serve until the January 1998 election. Directors elected at any election held between May 1, 1994, and December 31, 1994, shall serve until the May 1998 election. Directors elected at any election held between January 1, 1995, and April 30, 1995, shall serve until the January 1998 election. Directors elected at any election held between May 1, 1995, and July 31, 1995, shall serve until the May 1998 election. Directors elected at any election held between August 1, 1995, and December 31, 1995, shall serve until the May 1998 election. Directors whose terms expire prior to the election date set by this section shall continue to serve until their successors have been elected and qualified.

(c) All other provisions of this Act take effect September 1, 1995.

SECTION 51. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

#### **Floor Amendment No. 1**

Amend C.S.S.B. 626 as follows:

(1) Add to Section 3 of the bill by adding Section 59.008 to read as follows:

Sec. 59.008. The district will coordinate with the Texas Department of Transportation on any Texas Department of Transportation project that constructs or improves roads or other major facilities that would affect the drainage pattern in a manner than might increase the potential for or the severity of flooding. The district and the Texas Department of Transportation will cooperate under a jointly developed memorandum of agreement which may address but is not limited to:

- (1) potential impact and risk assessment;
- (2) drainage retention strategies;
- (3) drainage and erosion control design policy and procedures;

- (4) justification and economic cost savings strategies;
- (5) road or road improvement project inclusion in the master drainage plan; and
- (6) long term drainage planning to protect the safety and welfare of county residents and the travelling public.

**Floor Amendment No. 1 on Third Reading**

Amend C.S.S.B. 626 on third reading as follows:

- (1) In Section 2 of the bill, Section 49.001(a)(1), after the word "law" insert "or any conservation and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes)".

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on S.B. 626 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Sims, Ratliff, Montford, and Barrientos.

**NOTICE OF SESSION TO HOLD  
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Harris announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 7:45 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

**SENATE RULE 11.19 SUSPENDED  
(Posting Rule)**

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Jurisprudence might consider the following bills tomorrow:

**H.B. 2401  
H.B. 2042**

**SENATE RULE 11.19 SUSPENDED  
(Posting Rule)**

On motion of Senator Armbrister and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on State Affairs might consider H.B. 2304 today.

**CONFERENCE COMMITTEE ON HOUSE BILL 984**

Senator West called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 984** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **H.B. 984** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Luna, Cain, Leedom, and Gallegos.

**MEMORIAL RESOLUTIONS**

**S.R. 1062** - By Sims: In memory of T. A. Cunningham of San Antonio.

**S.R. 1072** - By Ratliff: In memory of Deborah Patterson Liesman of Paris, Texas, and Brookston.

**CONGRATULATORY RESOLUTIONS**

**S.R. 1060** - By Armbrister: Commending Russell Sage Brumbelow of Fort Bend County for his dedication to and preservation of the land settled in 1891 by his ancestors.

**S.R. 1061** - By Ellis: Commending Liat Avivi of Harris County on being recognized for excellence in writing in the Scholastic Writing Awards of 1995 Contest.

**S.R. 1063** - By Sims: Commending the naming of the Nursing-Physical Science Building at Angelo State University in memory of the late Angelo State University President Lloyd Drexell Vincent.

**S.R. 1064** - By Sims: Commending the National Auctioneers Foundation for its efforts in promoting the auction method of marketing.

**S.R. 1065** - By Sims: Commending the leaders and the community of Buffalo Gap.

**S.R. 1066** - By Sims: Commending Adam D. Williams of Harker Heights on achieving the rank of Eagle Scout.

**S.R. 1067** - By Sims: Commending Eric Fox of Abilene on achieving the rank of Eagle Scout.

**S.R. 1068** - By Sims: Congratulating Charles Edward Thomas, Jr., on the occasion of his graduation from the Texas School for the Deaf.

**S.R. 1069** - By Nixon: Commending the life of Miss Margie Neal, the first woman to serve in the Texas Senate.

**S.R. 1070** - By Nixon: Congratulating Lorene Cariker Dorsey of Nacogdoches on the occasion of her 100th birthday.

**H.C.R. 190** - (Montford): Congratulating the Texas State Artists for 1994 and 1995 upon their selection.

**RECESS**

On motion of Senator Truan, the Senate at 12:44 p.m. recessed until 7:45 a.m. tomorrow for the Local and Uncontested Bills Calendar.

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**APPENDIX**

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**REPORTS OF STANDING COMMITTEE**

The following committee reports were received by the Secretary of the Senate:

May 15, 1995

STATE AFFAIRS — C.S.H.B. 2151, C.S.H.B. 2599

**SENT TO GOVERNOR**

(May 15, 1995)

<b>S.C.R. 128</b>	<b>S.B. 1009</b>
<b>S.C.R. 139</b>	<b>S.B. 1029</b>
<b>S.C.R. 140</b>	<b>S.B. 1148</b>
<b>S.B. 114</b>	<b>S.B. 1158</b>
<b>S.B. 701</b>	<b>S.B. 1168</b>
<b>S.B. 971</b>	<b>S.B. 1212</b>
<b>S.B. 1196</b>	<b>S.B. 1336</b>
<b>S.B. 344</b>	<b>S.B. 1454</b>
<b>S.B. 526</b>	<b>S.B. 1492</b>
<b>S.B. 659</b>	<b>S.B. 1637</b>
<b>S.B. 832</b>	<b>S.B. 1682</b>

**SEVENTY-FIRST DAY**

(Continued)

(Tuesday, May 16, 1995)

**AFTER RECESS**

The Senate met at 7:45 a.m. and was called to order by Senator Harris.

**LOCAL AND UNCONTESTED BILLS CALENDAR**

The Presiding Officer announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.